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Extreme poverty and human rights

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on extreme poverty and human rights, Philip Alston, submitted in accordance with Human Rights Council resolution 26/3.

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Report of the Special Rapporteur on extreme poverty and human rights

Summary

The present report begins with an analysis of the confusing approaches to human rights taken by the World Bank in its legal policy, public relations, policy analysis, operations and safeguards. The Special Rapporteur then seeks to explain why the Bank has historically been averse to acknowledging and taking account of human rights, argues that the Bank needs a new approach and explores what differences that might make.

The Special Rapporteur concludes that the existing approach taken by the Bank to human rights is incoherent, counterproductive and unsustainable. For most purposes, the World Bank is a human rights-free zone. In its operational policies, in particular, it treats human rights more like an infectious disease than universal values and obligations. The biggest single obstacle to moving towards an appropriate approach is the anachronistic and inconsistent interpretation of the "political prohibition" contained in its Articles of Agreement. As a result, the Bank is unable to engage meaningfully with the international human rights framework, or to assist its member countries in complying with their own human rights obligations. That inhibits its ability to take adequate account of the social and political economy aspects of its work within countries and contradicts and undermines the consistent recognition by the international community of the integral relationship between human rights and development. It also prevents the Bank from putting into practice much of its own policy research and analysis, which points to the indispensability of the human rights dimensions of many core development issues.

The Special Rapporteur argues that what is needed is a transparent dialogue designed to generate an informed and nuanced policy that will avoid undoubted perils, while enabling the Bank and its members to make constructive and productive use of the universally accepted human rights framework. Whether the Bank ultimately maintains, adjusts or changes its existing policy, it is essential that the policy should be principled, compelling and transparent. The recommendations that follow provide some indication as to what a World Bank human rights policy might look like in practice.

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I. Introduction[1]

1. The present report on the human rights policy of the World Bank[2] is submitted in accordance with Human Rights Council resolution 26/3.

2. In the context of a mandate dealing with extreme poverty and human rights, the World Bank is arguably the single most important international agency. Some might question this characterization on the grounds that the $40 billion or more that the Bank provided to borrowing countries in 2014 represents only a fraction of total private capital flows to developing countries from all multilateral and national development banks, bilateral donors and private investors. However, not only is the elimination of extreme poverty one of its two central goals, its research is more voluminous and influential than that of its peers. It remains the key standard-setter in many areas, its knowledge and expertise are often crucial and its seal of approval frequently encourages the participation of other donors or investors.

3. The Special Rapporteur begins his report by looking at how human rights are approached within the following contexts in the work of the Bank: legal policy, public relations, policy analysis, operations and safeguards. He then seeks to explain the reasons for the historical aversion of the Bank to human rights, argues that it needs a new approach and explores what difference that might make. Finally, he reflects on what a World Bank policy on human rights might look like.

4. The thrust of the report is that the existing approach of the Bank is incoherent, counterproductive and unsustainable. It is based on outdated legal analysis and shaped by deep misperceptions of what a human rights policy would require. What is needed is a transparent dialogue designed to generate an informed and nuanced policy that will avoid undoubted perils, while enabling the Bank and its members to make constructive and productive use of the universally accepted human rights framework.

II. Human rights policy of the World Bank

5. The World Bank does not have a single comprehensive human rights policy. Rather, it has many different and competing approaches to the issue. For analytical purposes it can be seen to have adopted different human rights policies in each of the following contexts: legal policy, public relations, policy analysis, operations and safeguards.

A. Legal policy

6. The Articles of Agreement of the International Bank for Reconstruction and Development (IBRD) contain several provisions commonly referred to as the "political prohibition". Most importantly, article IV, section 10 provides that: "The Bank and its officers shall not interfere in the political affairs of any member, ...

[1] The Special Rapporteur is grateful to Christiaan van Veen for his invaluable assistance in the preparation of this report.

[2] The present report focuses only on the policies of the International Bank for Reconstruction and Development and the International Development Association, jointly referred to hereafter as the World Bank or the Bank.

Only economic considerations shall be relevant to their decisions ...". Successive General Counsels of the Bank have provided legal interpretations that have sought to distinguish legitimate "economic considerations" from inappropriate "political" factors.

7. In the mid-1960s, the General Assembly characterized the policies of apartheid in southern Africa and the colonial policies of Portugal as violations of the Charter of the United Nations and crimes against humanity. It requested United Nations specialized agencies, including IBRD and the International Monetary Fund, to deny assistance to those Governments. In 1967, the Bank refused to comply with the relevant resolutions, citing a legal opinion that such action would be political rather than economic.

8. Beginning in the late 1980s, the General Counsel of the Bank, Ibrahim Shihata, revisited the human rights issue. In a 1990 opinion he considered the question of governance[3] and in 1995, the political prohibition.[4] Although the latter opinion recognized the indivisibility of human rights, it drew a clear distinction between the two sets of rights. The General Counsel argued that, although the operations of the Bank already promoted a broad range of economic, social and cultural rights, its Articles of Agreement would normally prohibit it from promoting political rights. He left open the possibility of an exception in that latter regard when "an extensive violation of political rights which takes pervasive proportions" had "significant economic effects".[4]

9. In January 2006, on his last day in office, the then General Counsel, Roberto Dañino, circulated a legal opinion on the Bank and human rights. Without explicitly claiming that the Bank had human rights obligations, the opinion charted a new approach. First, the Bank could take any type of human rights into account, provided there was economic impact or relevance. Second, where violations or non-fulfilment of human rights obligations had an economic impact, the Bank should take them into account. Third, the Bank might assist member countries to meet their legal obligations regarding human rights and should be broadly supportive of such commitments where they had an economic impact or relevance.[5]

10. In October 2006, the next General Counsel, Ana Palacio, characterized her predecessor's interpretation as "allowing, but not mandating, action on the part of the Bank in relation to human rights." That is more restrictive than the actual conclusion of Mr. Dañino that there are instances in which the Bank should take human rights into account. Ms. Palacio accepted that the Bank had a role in supporting its members to fulfil their human rights obligations. Her analysis began with an affirmative reference to Mr. Shihata's approach and she added that "human rights would not be the basis for an increase in Bank conditionalities, nor should

[3] Ibrahim Shihata, "Issues of 'governance' in borrowing members — the extent of their relevance under the Bank's Articles of Agreement", legal memorandum of the General Counsel of the World Bank Group, 21 December 1990.

[4] Legal opinion of the General Counsel of the World Bank Group, 11 July 1995, in Ibrahim Shihata, *The World Bank Legal Papers* (The Hague, Martinus Nijhoff Publishers, 2000).

[5] See Roberto Dañino, "The legal aspects of the World Bank's work on human rights: some preliminary thoughts", in *Human Rights and Development: Towards Mutual Reinforcement*, Philip Alston and Mary Robinson, eds. (Oxford University Press, 2005).

they be seen as an agenda that could present an obstacle for disbursement or increase the cost of doing business".[6]

11. In a letter responding to a suggestion by two special procedures mandate holders in 2012, that Bank financing should support the human rights obligations of States, the current General Counsel, Anne-Marie Leroy, and the Vice-President for the Africa Region, Makhtar Diop, stated that "only economic considerations — meaning those that have a direct and obvious economic effect relevant to the Bank's work — can be taken into account in decisions by the Bank and its officers. Therefore, in our view, your suggestion goes beyond the bounds of the Bank's institutional mandate."[7] In a subsequent letter, Ms. Leroy sought to distance the Bank from Mr. Dañino's opinion by noting that it "was neither presented to, nor endorsed by, the Bank's Board of Executive Directors and therefore, at this stage, it should not be represented as Bank policy."[8]

12. As the legal approach of the World Bank to human rights currently stands, the most problematic aspect is that it is based on double standards. On the one hand, successive General Counsels have found convincing rationales to facilitate the wish of the management to work on issues as diverse as corruption, money laundering, terrorist financing, governance and the rule of law, but on the other hand, human rights remains on a very short blacklist, along with support for the military and intelligence services, as issues that are currently classified as being predominantly political and thus prohibited.

13. The most telling example of that double standard is to be found in a 2012 opinion by the General Counsel justifying the involvement of the Bank in the criminal justice sector.[9] It is a carefully argued analysis that invokes Mr. Shihata's opinions extensively in order to reach the conclusion that the mandate of the Bank permits it to work in that area "provided that proposed interventions are grounded in an appropriate and objective economic rationale and are structured so as to avoid interference in the political affairs of a member country." Because the issues raised and many of the matters dealt with have so much in common with human rights, it is instructive to examine the methodology and arguments employed and to consider the extent to which they could be applied equally to human rights.

14. The 2012 opinion relies on a broad range of sources. Previous legal opinions are invoked extensively but selectively. The practice of other multilateral development banks and of multilateral and bilateral development agencies are all considered to be pertinent. Finally, independent scholarship and Bank research are both cited to bolster the legal arguments made.

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[6] Ana Palacio, "The way forward: human rights and the World Bank", *Development Outreach*, vol. 8, No. 2 (October 2006).

[7] Letter from Anne-Marie Leroy and Makhtar Diop to the Special Rapporteur on the right to food and the Independent Expert on the effects of foreign debt and other international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, 9 October 2012. Available from http://spdb.ohchr.org/hrdb/22nd/OTH_09.10.12_(7.2012).pdf.

[8] Letter from Anne-Marie Leroy to the Special Rapporteur on the right to food and the Independent Expert on the effects of foreign debt and other international financial obligations of States, 16 January 2013. Available from http://spdb.ohchr.org/hrdb/22nd/World_Bank_16.01.13_(7.2012).pdf.

[9] Anne-Marie Leroy, "Legal note on Bank involvement in the criminal justice sector", 9 February 2012.

15. The opinion begins with definitions. First, the criminal justice sector is expansively defined, thus potentially enabling the Bank to undertake broad-ranging activities under that rubric. The definition includes "human rights and ombudsman's offices," but in practice those will presumably fall foul of the political prohibition.

16. Next is the definition of development. In contrast to the notion current over 70 years ago when the Articles of Agreement were adopted, development today is said to encompass "broad areas of human development, social development, education, protection of global public goods, governance and institutions, as well as issues such as inclusion and cohesion, participation, accountability and equity." But not, apparently, human rights, which are somehow different.

17. The author of the opinion then seeks to demonstrate that economic considerations demand a focus on criminal justice. It is argued that crime and violence impede economic development, reduce investment and employment growth and make countries less competitive. They undermine strategies to increase levels of social and human capital, which are key to economic growth, divert funds away from development and other productive activities, weaken the economies of fragile States and can exacerbate conflict. They also disproportionately affect the poor, by undermining employment, reducing mobility and hindering access to basic services.

18. The next step is to demonstrate that criminal justice interventions will not violate the political prohibition. While acknowledging that "most development efforts" have a "political dimension," a narrow interpretation is adopted, according to which the Bank cannot involve "itself in the partisan politics or ideological disputes that affect its member countries". Inappropriate involvement is said to include "favoring political factions, parties or candidates in elections," or "endorsing or mandating a particular form of government, political bloc or political ideology."

19. Finally, the author of the opinion acknowledges that there will always be a risk that criminal justice interventions might cross the line into the essentially political realm. A range of methods to manage such risk are thus identified, such as promoting "country ownership" of the activity, including through consultation with non-State stakeholders; avoiding involvement in enforcement on specific cases; undertaking careful risk analysis; and setting up a special review mechanism if particular concerns arise.

20. In effect, although the Bank's lawyers might be expected to strenuously dispute the proposition, the template just described could be applied in a very similar fashion to justify a human rights policy. Previous legal opinions have left space for the crafting of such a policy, other multilateral development banks and most multilateral and bilateral development agencies have human rights policies and there has been voluminous scholarly research on those issues. The General Counsel's definition of development for the purposes of interpreting the mandate clearly accommodates human rights. There are innumerable ways in which human rights violations have major economic impacts and the poor are disproportionately affected. And, just as with the criminal justice sector, there will be some aspects of some rights which would fall foul of the political prohibition, thus requiring a series of risk management strategies to avoid such problems.

21. The adoption of an expansive criminal justice policy, while refusing to engage with human rights, leads to a highly artificial separation of the two issues. One

example is the explanation in the opinion of activities that would be inappropriate by reference to "international due process standards," a concept that has little meaning unless interpreted as incorporating human rights standards.

B. Public relations policy

22. Since the early 1990s, the Bank has made numerous public relations statements affirming the importance of human rights. It has often observed that human rights and development are interrelated, insisted that its projects contribute to the fulfilment of economic, social and cultural rights, argued that its work on governance contributes to an institutional environment in which human rights can thrive, and claimed that it consistently applies "human rights principles" such as participation, in its operations. Those claims, however, are usually made in the abstract, without detailed analysis or supporting evidence.[10] While the Nordic Trust Fund, established within the Bank, has succeeded in facilitating a more sophisticated debate, its outputs have yet to bring changes to the actual practice of the Bank.

C. Policy analyses

23. There are, however, some Bank studies which enter into detail on the issue of human rights, such as those in its annual flagship publication, the *World Development Report* dealing with issues such as equity, gender equality, conflict resolution, HIV/AIDS and disability. In 2006 the *World Development Report* urged that equity should be a central concern in the design and implementation of development policy. It noted that the "international human rights regime testifies to the shared belief that all should have equal rights and be spared extreme deprivation," and acknowledged various other links between human rights and equity.[11] In 2011, the *World Development Report* focused on conflict, security and development. The message of the report was that strengthening legitimate institutions and governance to provide security, justice and jobs for citizens is crucial to breaking cycles of violence in fragile countries. Building confidence is a major challenge and one that requires the protection of human rights. Detailed suggestions are explored for achieving that goal.[12]

24. The main message of the *World Development Report* in 2012 on gender equality and development was that gender equality was both a core development objective and "smart economics". It mattered because "the ability to live the life of one's own choosing and be spared from absolute deprivation is a basic human right." Development is defined as "a process of expanding freedoms equally for all people," and international and regional human rights instruments crucial in achieving gender equality. The report described the Convention on the Elimination

[10] See, for example, Anupama Dokeniya "Rights and development", 16 May 2012. Available from http://blogs.worldbank.org/publicsphere/node/5989.

[11] World Bank, *World Development Report 2006: Equity and Development* (Washington, D.C., 2005).

[12] World Bank, *World Development Report 2011: Conflict, Security and Development* (Washington, D.C., 2011).

of All Forms of Discrimination against Women as "the primary international vehicle for monitoring and advocating gender equality."[13]

25. Since 2011, the Bank has published three major studies on populations at risk of HIV/AIDS. All three take the approach that assisting those vulnerable groups is a human rights imperative. They also contain explicit references to the relevant human rights norms.[14]

26. In the *World Report on Disability*, jointly published by the Bank and the World Health Organization, the leaders of the two organizations stated that the report aimed to "provide the evidence for innovative policies and programmes that can improve the lives of people with disabilities, and facilitate implementation of the United Nations Convention on the Rights of Persons with Disabilities ... This landmark international treaty reinforced our understanding of disability as a human rights and development priority."[15] The report itself is full of practical guidance about how international human rights law is relevant to dealing with disability issues in development.

27. A striking example of a publication dealing with human rights is the report, published jointly by the Bank and the Organization for Economic Cooperation and Development (OECD) in 2013, entitled *Integrating Human Rights into Development: Donor Approaches, Experiences, and Challenges*. It makes a powerful case for the integration of human rights and development, although, as with most such publications, it includes at the front of the book a caveat that "the findings, interpretations, and conclusions expressed in this work do not necessarily reflect the views of the World Bank, its Board of Executive Directors, or the governments they represent."[16]

28. Other valuable research on human rights topics has also been published under World Bank auspices with funds from the Nordic Trust Fund, specially set up for the purpose.[17] The Special Rapporteur is not, however, aware of significant internal policy impact resulting from those publications.

D. Bank operations

29. Despite the powerful arguments marshalled in Bank publications for acknowledging the links between human rights and various development objectives, Bank-financed projects and programmes go to great lengths to avoid any operational

[13] World Bank, *World Development Report 2012: Gender Equality and Development* (Washington, D.C., 2011).

[14] World Bank, *The Global HIV Epidemics among Sex Workers* (2013); *The Global HIV Epidemics among Men Who Have Sex with Men* (2011); and *The Global HIV Epidemics among People Who Inject Drugs* (2013).

[15] World Health Organization and World Bank, *World Report on Disability* (Geneva, World Health Organization, 2011).

[16] World Bank and OECD, *Integrating Human Rights into Development: Donor Approaches, Experiences, and Challenges* (Washington, D.C., 2013).

[17] See, for example, Varun Gauri and Siri Gloppen, "Human rights-based approaches to development: concepts, evidence, and policy" *Polity*, vol. 44, No. 4 (October 2012); Daniel Brinks and Varun Gauri, "The law's majestic equality? The distributive impact of litigating social and economic rights", Policy research working paper No. 5999 (World Bank, 2012); and Salman M.A. Salman and Siobhán McInerney-Lankford, "The human right to water: legal and policy dimensions" (World Bank, 2004).

references to human rights. One case study out of many must suffice. It concerns gender-based violence, a phenomenon that is universally recognized as violating human rights.

30. The Special Rapporteur analysed 13 projects on gender-based violence that are part of a major Bank initiative on the issue and were approved between January 2012 and June 2015. None of the relevant project documents engages substantively with the human rights dimensions of gender-based violence. Passing references can be found to the Convention on the Elimination of All Forms of Discrimination against Women or the Universal Declaration of Human Rights, but no analysis of the relevant rights and obligations is provided and the provisions are not linked to the project at hand.[18] In fact, even the generic terms "human rights" and "rights" are rarely used and when they are, no elaboration is provided. The intended project beneficiaries are presented not as rights holders, but as clients or service recipients. The borrowing State bears contractual responsibilities towards the Bank, but no reference is made to its international or domestic human rights obligations. No reference is made to responsibility for gender-based violence by State actors, such as police or health-care workers, despite the frequency of such problems, and no reliance is ever placed upon the detailed human rights-based frameworks for tackling gender-based violence drawn up by the Committee on the Elimination of Discrimination against Women and various other international human rights actors, despite the fact that the Convention has been almost universally ratified.

31. The systematic avoidance of human rights language, frameworks and institutions in the context of Bank projects on gender-based violence is replicated in most other areas of its activities,[19] although there have been some exceptions over past decades in areas such as HIV/AIDS and some gender-related projects.

E. Safeguard policies

32. One context in which the relevance of human rights might have been expected to be acknowledged is the environmental and social "safeguard" policies of the Bank. However, the current safeguards contain no explicit human rights policy and the sole reference to human rights occurs in operational policy 4.10 on indigenous peoples.[20] Human rights have sometimes had an indirect influence on the interpretation of the safeguard policies by the World Bank Inspection Panel, but the practice in that regard has been inconsistent and piecemeal.[21]

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[18] See, for example, projects P130819 (HN safer municipalities), Honduras, approved on 13 December 2012; P132768 (Pernambuco equity and inclusive growth development policy loan), Brazil, approved on 25 June 2013; and P145605 (enhancing fiscal capacity to promote shared prosperity development policy loan), Colombia, approved on 6 September 2013.

[19] Kirk Herbertson, Kim Thompson and Robert Goodland, *A Roadmap for Integrating Human Rights into the World Bank Group* (Washington D.C., World Resources Institute, 2010) and Galit A. Sarfaty, *Values in Translation: Human Rights and the Culture of the World Bank* (Stanford, California, Stanford University Press, 2012).

[20] Operational policy 4.10 on indigenous peoples begins by stating that the policy "contributes to the Bank's mission of poverty reduction and sustainable development by ensuring that the development process fully respects the dignity, human rights, economies, and cultures of indigenous peoples".

[21] Adam McBeth, *International Economic Actors and Human Rights* (Abingdon, United Kingdom, Routledge, 2010).

33. Safeguards for investment project financing within a new environmental and social framework are expected to be adopted by the end of 2015. In late 2014, 28 special procedures mandate holders addressed a lengthy and detailed analysis of the July 2014 draft framework to the World Bank.[22] The Special Rapporteur notes that his own position is adequately summarized in the letter, in which the authors state that "the document seems to go out of its way to avoid any meaningful references to human rights and international human rights law, except for passing references in the vision statement and environmental and social standard (ESS) 7." Unfortunately, the second draft, which is about to be released, is no improvement in that regard, despite voluminous submissions by large numbers of stakeholders calling upon the Bank to take account of human rights.[23]

III. Explaining the aversion of the World Bank to human rights

34. Before considering why the Bank should change its approach, it is essential to seek to understand why there is currently such an aversion to human rights within the management of the Bank. Six factors would seem to be especially important.

Institutional culture

35. From its creation in 1944, the Bank has sought to present itself as a functional, technical agency and hence one that is above the political fray. That was deemed essential to avoid the appearance of choosing sides in the aftermath of the Second World War and subsequently in the fraught climate of the cold war. That technocratic image is mirrored in the internal culture of the Bank, which is dominated by economists. That in turn affects how institutional goals are shaped and justifications framed. To become relevant, human rights factors need to be presented in terms of economic impact, rather than as matters of values, law, or dignity.[24] Just as human rights proponents are uncomfortable with the consequentialism of economics, economists often perceive rights as being rigid, anti-market and overly State-centric. The concern is that the engagement of the Bank with human rights would bring about a radical paradigm shift with unknown consequences.[25]

36. Another institutional element is the pressure to approve loans, or as a famous Bank report put it, to "push money out the door".[26] Despite official denials, those pressures continue. In such a setting, it is unsurprising that some see social safeguards and even more so human rights as factors likely to raise costs and delay

[22] Letter from 28 special procedures mandate holders to the President of the World Bank, 12 December 2014. Available from www.ohchr.org/Documents/Issues/EPoverty/WorldBank.pdf.

[23] For all official documentation on the consultation on the draft framework, see http://consultations.worldbank.org/consultation/review-and-update-world-bank-safeguard-policies.

[24] See, for example, Sarfaty, *Values in Translation: Human Rights and the Culture of the World Bank* and Nordic Trust Fund and World Bank, "Human rights and economics: tensions and positive relationships" (2012).

[25] Mac Darrow, "The Millennium Development Goals: milestones or millstones? Human rights priorities for the post-2015 development agenda", *Yale Human Rights and Development Law Journal*, vol. 15, No. 1 (2012).

[26] W. Wapenhans, "Effective implementation: key to development impact", report of the Portfolio Management Task Force (Washington, D.C., World Bank, 1992).

lending. An internal Bank report observed that management is often uninterested in, or resistant to, work on safeguards and treats it as a box to be checked.[27] However, minimizing safeguard concerns enhances the likelihood of flawed project design, which neglects elements important for success, overlooks likely opposition and resistance, creates ill will and damages the credibility of the Bank. It also assumes, contrary to the findings of a report by the Independent Evaluation Group, that the costs of safeguards outweigh their benefits.[28]

Misplaced legalism

37. The goals and policies of the Bank have changed radically since 1944. The Articles of Agreement contain no mention of either of its current proclaimed "twin goals" of ending extreme poverty and promoting shared prosperity. The General Counsels have played a key role in the necessarily dynamic interpretation of the Articles required to reflect and justify that evolution.

38. Interpretation of the Articles is decided by the Executive Directors by a simple majority vote, with the possibility of appeal to the Board of Governors.[29] In practice, legal opinions by the General Counsel have provided the basis for most such interpretations. General Counsels also provide regular advice to the Executive Directors and the President and senior management, including on interpretation of the mandate.[30] The most influential General Counsels have acknowledged the need to adopt a purposive or teleological approach.[31]

39. The principal exception to that general rule has been the issue of human rights. As theories of development have changed and the Bank has confronted new challenges, legal counsels have had no difficulty in justifying the engagement of the Bank with issues such as corruption, the rule of law, environmental degradation and other novel issues. Alone among those new issues, human rights is classified as political rather than economic, despite the view of a former General Counsel that "human rights are an intrinsic part of the Bank's mission".[5] Today, it is still the Legal Department that takes the lead in "policing" the human rights taboo within the Bank.[32] That is said to apply even within the discussions in the Executive Board.

40. It is particularly striking that one of the most complex and contentious issues confronting the Bank in the twenty-first century, namely a human rights policy, is resolved not on the basis of any detailed legal or empirical analysis, or of transparent debates within the Bank, but on the basis of a legal opinion rooted in the politics of the last century and based on a mode of legal analysis that has long been considered to be unjustified and unsustainable in relation to almost every other issue.

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[27] World Bank Internal Audit Department, "Advisory review of the Bank's safeguard risk management" (16 June 2014).

[28] Independent Evaluation Group, World Bank, *Safeguards and Sustainability Policies in a Changing World: an Independent Evaluation of World Bank Group Experience* (Washington D.C., World Bank, 2010).

[29] IBRD Articles of Agreement, article IX. See also Aron Broches, *Selected Essays: World Bank, ICSID, and Other Subjects of Public and Private International Law* (Dordrecht, Netherlands, Martinus Nijhoff Publishers, 1995).

[30] Shihata, *The World Bank Legal Papers*.

[31] See, for example, Shihata, *The World Bank Legal Papers* and Broches *Selected Essays*.

[32] See Sarfaty, *Values in Translation*.

Cultural relativism

41. Ironically, given the widespread perception that the Bank is dominated by Western interests and values, the argument is often heard that the Bank needs to avoid human rights discourse because it may be perceived as imposing Western values on non-Western countries. Thus, the authors of a report on gender and human rights-based approaches in development felt the need to address such concerns in a separate annex.[33] While the debate over cultural relativism is a very vibrant one in both political and scholarly circles, the justifiable issue of concern is not the basic universality of the standards, which has long been reaffirmed, but the degree of cultural appropriateness shown in their application.[34] For the Bank to invoke a relativist justification to refuse all engagement with the universal standards is contrary to international law. Particular interpretations of human rights will always be contested, but so too will definitions of poverty, the rule of law, corruption and a great many other notions which lie at the heart of its work. Avoidance is no substitute for sophisticated and nuanced engagement.

Shadow of sanctions

42. The Bank has a long, and generally unhappy, history in which human rights concerns have been linked to demands for it to impose sanctions on client States. Such demands have come from many sources, including the General Assembly, the United States of America and other Governments and a wide range of non-governmental organizations (NGOs). In principle, the Bank has rejected most such calls on the grounds that they involve politics rather than economics. In practice, however, it has occasionally succumbed to political pressure and delayed or withheld funds, albeit insisting that its actions did not amount to sanctioning.[35]

43. An especially problematic, if well-intentioned, case was the decision in February 2014 to delay a $90 million health project loan to Uganda after the country adopted a draconian anti-homosexuality act. The Bank suggested that it had acted only to ensure that the health project would not be adversely affected by the act. However, the President of the Bank explained that he had acted because he was not convinced that the loan would not lead to discrimination or even endangerment of the lesbian, gay, bisexual and transgender community.

44. The President sought to make the case that serious institutional discrimination had economic costs that the Bank could legitimately take into account, but the same argument applies to equally problematic forms of discrimination against different groups in a large number of countries in which the Bank continues to operate, and in response to which no action has been taken. No convincing justification was put forward by the Bank as to why Uganda alone was singled out among the various countries that have laws that criminalize homosexuality. No explanation was given

[33] World Bank and Nordic Trust Fund, "Report of gender and human rights-based approaches in development" (2013).

[34] In its strongest form, cultural relativism claims "that no transcendent or transcultural ideas of right can be found or agreed on, and hence that no culture or state ... is justified in attempting to impose on other cultures or states what must be understood to be ideas associated particularly with it." Philip Alston and Ryan Goodman, *International Human Rights* (Oxford University Press, 2012).

[35] The best-known cases relate to Chile in 1972, Kenya in 1991 and again in 2006, Indonesia in 1999 and the Russian Federation in 2000.

as to why discrimination against lesbian, gay, bisexual, transgender and intersex communities was the trigger for action, rather than often deeply entrenched official discrimination against various other groups. Nor was the action based on any policy document that had previously been elaborated. And finally, if the Bank itself had been directly implicated in the issue at hand, urgent remedial action would have been much more readily defensible, but it was not.

45. While it was clearly not intended as such, the most significant impact of the decision was probably to convince an even larger number of countries that the Bank should indeed be kept away from human rights issues for fear that it would start to apply sanctions more broadly and in an equally unpredictable and ad hoc manner.

46. The challenge now is to ensure that there is a silver lining to that incident. The Bank needs to elaborate a nuanced policy which will avoid such incidents in the future; eschew sanctions of that type except in the most extreme and predefined situations; and develop a range of policies that can promote respect for human rights in a constructive manner consistent with its overall policy objectives and its mandate.

Turning the World Bank into a human rights cop

47. On various occasions, senior Bank officials have warned of the dire consequences that would follow if the Bank were to become some sort of global policeman, responsible for enforcing respect for human rights by its client Governments. Because of the sanctions mentality described above, that fear is not altogether unfounded.

48. There is a vast difference, however, between having a carefully tailored human rights policy and becoming an enforcer of rights. Many other international organizations have adopted such policies; none of them have become enforcers. The established international human rights regime exists to engage with States that are accused of violations and to find ways to encourage, facilitate and promote compliance with international norms. There is no reason why that task would or should move to the Bank if it were to acknowledge that human rights are also relevant to its operations. There are many ways in which the Bank can encourage or even assist States to design policies and projects that are consistent with the obligations that those States have voluntarily undertaken through the ratification of binding international treaties. It is especially noteworthy in this respect that the Bank safeguards already require it to take account of the international environmental treaty obligations of a country when undertaking an environmental assessment and it has managed to do that without giving rise to undue controversy.[36]

Competition with other lenders

49. It is often suggested that obliging the Bank to take human rights into account would place it at a disadvantage to other lenders, which might not do so. In 2006, the then President of the Bank, Paul Wolfowitz, criticized the Government and banks of China for not attaching human rights and environmental standards to their loans to Africa. In 2011, China overtook the Bank in the volume of its development lending. The creation of new multilateral investment banks and the growth of national development banks in countries like Brazil and India, means ever more

[36] See, for example, operational policies 4.01 and 4.36.

competition in the market for lenders. While the World Bank has always downplayed such suggestions, most commentators suggest that those developments have placed it under competitive pressure.

50. In fact, if the major new banks do not adopt appropriate social protection policies, there would be good reason to assume that the Bank will be less able to compete in terms of the time taken for project planning, the conditions offered to borrowers and the speed of disbursement. Both the New Development Bank, which proclaims itself "as an alternative to the existing US-dominated World Bank and International Monetary Fund",[37] and the Asian Infrastructure Investment Bank were set up in 2015. The Articles of Agreement of both banks reproduce the same political prohibition clause as is contained in the Articles of Agreement of the World Bank.[38] The Asian Infrastructure Investment Bank is committed to addressing environmental and social impacts, but it remains to be seen what type of standards and safeguards will be adopted and how, if at all, human rights will be factored in. Those are issues that will warrant the most careful scrutiny going forward.

51. The immediate question for the World Bank is whether the best strategy is to compete with the new lenders in a race to the bottom or to adopt a principled stance. Despite obvious temptations, there are strong arguments for the latter approach. Strong safeguards, as noted above, ensure sound planning, reduce subsequent problems, facilitate public support, minimize reputational costs for the lender and facilitate better overall outcomes. Loans that are made in secrecy and without such precautions carry with them the seeds of eventual disaster for both the borrower and the lender. The real comparative advantage for the World Bank lies in underwriting high-quality projects and maintaining its role as an innovator, rather than in a race to lend more at whatever cost. Of course, none of that means that the Bank should not explore efficiency gains that might be achieved through means other than cutting standards and avoiding human rights considerations.

IV. Time for change: why the World Bank needs a new approach to human rights

52. Based on the preceding review, the following propositions seem to encapsulate the actual practice of the World Bank: (a) pay lip service to human rights in official settings, as long as there are no consequences; (b) acknowledge the theoretical significance of human rights in studies and analyses of issues in relation to which they are incontestably relevant; (c) ensure that, as a general rule, the Bank does not engage with any aspect of human rights in its actual operations and lending; and (d) be prepared to make exceptions when political imperatives require it, even if that involves a high degree of inconsistency.

53. There are many reasons why a new approach is needed. The following six seem especially compelling.

[37] See http://ndbbrics.org/.

[38] See article 13 (e), Articles of Agreement of the New Development Bank, available from http://ndbbrics.org/agreement.html and article 31 (2), Articles of Agreement of the Asian Infrastructure Investment Bank, available from www.aiibank.org/uploadfile/2015/0629/20150629094900288.pdf.

54. First, an inconsistent, ad hoc and opaque policy of the type that exists today is in no one's interests. The world has changed dramatically since the 1980s and human rights are an unavoidable feature of national and international policies and debates. It is illusory to believe that the Bank can be fully effective without any meaningful engagement with that entire field of activity. By treating human rights as a taboo issue, the Bank has ensured that a whole range of issues that are universally acknowledged to be crucial to the development and poverty eradication agendas cannot be openly addressed or factored into its work.[39] As noted below, the valiant effort to rely upon surrogate terms can never be an adequate substitute for engaging with the human rights framework and norms. The result is a staff and management with relatively little understanding of the complexity of the international human rights regime, which in turn results in unfounded fears, avoidance of debates that would otherwise be a matter of course, a poor sense of how to respond when human rights problems force themselves onto the agenda and the absence of a credible Bank voice when those issues are discussed in other settings.

55. Second, the policies of the Bank need to reflect the current status of international human rights law, rather than the situation in the 1960s or the 1980s, when its existing policies were frozen into place. Even in the late 1980s, international human rights law was in its infancy and remained relatively contested. There were relatively few human rights treaties and many States had ratified none of them. The cold war dominated and distorted discussions. By contrast, today every country in the world is a party to multiple international human rights treaties and all engage voluntarily in international forums in which they explain and justify their human rights policies and practices. In short, it might have been justified to suggest in the late 1980s that much of the human rights regime was of a political nature. Today that is no longer the case and human rights law is an integral part of the international system.

56. Third, rather than being an outlier, the Bank needs to bring its approach into line with that of almost every other major international organization. In the mid-1980s, the Bank was one of many international organizations that were reluctant to engage with the human rights regime. The easiest example to cite is the United Nations Children's Fund (UNICEF), which gradually changed from a policy of ignoring rights issues during the 1980s to become an agency devoted to promoting the provisions of the Convention on the Rights of the Child. The same transition has occurred in many other international organizations, so that by 2013 the Secretary-General could adopt a "Human Rights Up Front" initiative, in which he called upon the United Nations, its agencies, funds and programmes to treat human rights as a system-wide core responsibility.

57. As of January 2015, the United Nations Development Programme (UNDP) officially recognized "the centrality of human rights to [its goals] ... and is committed to supporting 'universal respect for, and observance of, human rights and fundamental freedoms for all.'" It "shall ... refrain from providing support for activities that may contribute to violations of a State's human rights obligations and the core international human rights treaties ...". The UNDP policy does, however, contain provisions that seek to limit its human rights obligations. The policy says

[39] See Independent Evaluation Group, World Bank, *Results and Performance of the World Bank Group 2014* (Washington D.C., World Bank, 2015).

that it will support State efforts meet human rights obligations "as requested," notes that UNDP does not have a human rights "monitoring role" and notes that it will monitor its own compliance with its policies as a matter of "due diligence".[40] That is a formulation that has been carefully crafted both to acknowledge the centrality of human rights, but also to allay any concerns of Governments and officials that the organization is in the business of human rights enforcement.

58. Even in comparison with other multilateral development banks, the World Bank is still an outlier. A recent Bank study concluded that "[m]ost of the other MDBs refer to 'human rights' in supportive aspirational terms while recognizing the responsibility of clients to respect human rights." The World Bank, it noted, does so solely in relation to indigenous peoples.[41] Thus, while the World Bank was in good company in the 1980s in being wary of incorporating human rights standards into its work, it now stands almost alone, along with the International Monetary Fund, in insisting that human rights are matters of politics which it must, as a matter of legal principle, avoid, rather than being an integral part of the international legal order.

59. Fourth, the Bank needs to bring its operational policies into line with mainstream development theory, especially its own. In 1999, Amartya Sen published a landmark study entitled *Development as Freedom*, based on lectures given at the Bank. Sen made a powerful case that freedom and the enjoyment of a range of rights were integral to achieving meaningful development. More recently, William Easterly has argued that "the cause of poverty is the absence of political and economic rights, the absence of a free political and economic system that would find the technical solutions to the poor's problems". He dismissed policies that seek to artificially separate human rights from development as technocratic illusions.[42] The Bank itself has often paid lip service to the consensus that has emerged since the end of the cold war that recognizes that "democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing," as proclaimed in the Vienna Declaration and Programme of Action, adopted by consensus by 171 States in 1993. By staunchly maintaining the technocratic illusion, not in its conceptual work, but in its operations where it really matters, the Bank has not only placed itself firmly outside mainstream development thinking and policies formally endorsed by all States, but perhaps more problematically has sent the message that rights and development can, and in its own case must, be kept separate. The flow-on effect of that negative example cannot be underestimated;

60. Fifth, the Bank needs at least a convincing due diligence policy to enable it to adjust or reject projects that would otherwise lead to, or support, human rights violations. Its safeguard policies have long been referred to as "do-no-harm" policies, but their very limited coverage in terms of the full gamut of the human rights obligations of States has meant that many serious violations are alleged to have occurred in the context of projects funded by the Bank.[43] The Special

[40] UNDP, "Social and environmental standards" (New York, 2014).

[41] World Bank, "Comparative review of multilateral development bank safeguard systems" (May 2015).

[42] William Easterly, *The Tyranny of Experts: Economists, Dictators, and the Forgotten Rights of the Poor* (New York, Basic Books, 2013).

[43] See International Consortium of Investigative Journalists project, "Evicted and abandoned: the World Bank's broken promise to the poor", available from www.icij.org/project/world-bank and Human Rights Watch, "At your own risk: reprisals against critics of World Bank Group projects" (June 2015) and *Waiting Here for Death: Displacement and 'Villagization' in Ethiopia's Gambella Region* (2012).

Rapporteur is in no position to judge the accuracy of any particular allegations of rights violations and nor is it necessary to do so in the present report. Suffice it to note that the Bank's own internal reports have made clear that existing safeguard arrangements have often proved to be inadequate. Reports by the Inspection Panel have highlighted significant problems in specific projects and a report by the Internal Audit Department on resettlement programmes has revealed serious systemic deficiencies.[44] To its credit, the Bank responded to the latter by announcing extensive reforms.[45] Nonetheless, those evaluation reports provide powerful evidence of the need for a more sustained and better integrated approach, reflecting the full range of international human rights standards rather than the static list of specific concerns that are currently singled out for monitoring. Integrating human rights into operational policies is necessary to comply with the Bank's aim of doing no harm.

61. Sixth, by refusing to take account of any information emanating from human rights sources, the Bank places itself in an artificial bubble, which excludes information that could greatly enrich its understanding of the situations and contexts in which it works. That includes especially the materials generated by human rights treaty bodies, special procedures mandate holders and the universal periodic review process of the Human Rights Council, as well as analyses generated by NGOs. It is striking that the Bank regularly consults religious leaders, such as the faith-based and religious leaders' round table it held in 2015, but has no comparable meetings with human rights experts.

V. What difference would a human rights policy make?

62. The two most common responses heard from Bank officials in reply to suggestions that it adopt a human rights policy are in direct contradiction to one another. The first takes various forms, suggesting that such a reform would transform the nature of the Bank's role, open up a Pandora's box, create political havoc or be generally unmanageable. The second is that the Bank already does so much to promote the realization of human rights that a change in policy would make little difference and is thus unnecessary. The argument tends to go something like this: by improving access to goods and services such as health care, education and water and by lifting people out of poverty, the Bank enhances the enjoyment of human rights in many countries. Its focus on governance improves human rights, its emphasis on consultation enhances people's right to participate and its publications often acknowledge the importance of human rights. At the end of the day, the Bank might use different language from that of human rights law, but its goals are the same.

63. The last of those claims is reflected in the following statement: "In fact, it has been possible to integrate human rights (using principles derived from the human rights framework) without an explicit approach, as can be seen in the work of some of the international financial institutions." But the very next sentence in the same

[44] See, for example, Inspection Panel, World Bank, report and recommendation, "Republic of Uzbekistan: second rural enterprise support project (P109126) and Additional financing for second rural enterprise support project (P126962)" (9 December 2013).

[45] World Bank, "Action plan: improving the management of safeguards and resettlement practices and outcomes" (4 March 2015), available from http://pubdocs.worldbank.org/pubdocs/publicdoc/2015/3/71481425483119932/action-plan-safeguards-resettlement.pdf.

report provides a compelling rebuttal of that very claim: "A potential shortcoming of such an approach is the risk of 'rhetorical repackaging,' which involves a superficial use of human rights terms in development without a full incorporation of human rights obligations or principles".[46]

64. The key question then is whether it actually matters if the Bank uses the language of human rights or opts instead for surrogates which are perceived to be less politically loaded or contentious. After all, if it advocates for gender equality, does it really matter if it uses the language of human rights, or whether any reference is made to United Nations standards or the work of bodies such as the Committee on the Elimination of Discrimination against Women? Or if the Bank works to expand access to water and sanitation, who cares if it characterizes them as human rights or not? Or if the Bank talks about problems relating to inclusion, participation, governance or the rule of law, does it matter if the issues are framed in "Bank speak" rather than in terms of the human rights obligations of the State? Or if the focus is on assisting those living in extreme poverty, why worry if the Bank assiduously stops short of talking about a human right to social protection? Surely, what counts are results, not scoring points for correct language usage?

65. However, the use of a human rights framework and discourse actually makes an enormous difference, which is of course precisely why the Bank is so resistant to using it and so attached to the never-ending search for surrogate language that enables it to get at the same concerns. Human rights provides a context and a detailed and balanced framework; it invokes the specific legal obligations that States have agreed upon in the various human rights treaties; it emphasizes that certain values are non-negotiable; it brings a degree of normative certainty; and it brings into the discussion the carefully negotiated elaborations of the meaning of specific rights that have emerged from decades of reflection, discussion and adjudication. Even more importantly, the language of rights recognizes the dignity and agency of all individuals (regardless of race, gender, social status, age, disability or any other distinguishing factor) and it is intentionally empowering. Whether in the home, the village, school or workplace, or in the political marketplace of ideas, it makes a difference if one is calling for the realization of agreed human rights to equality or to water, rather than merely making a general request or demand, and human rights are inseparable from the notion of accountability. Where rights are ignored or violated, there must be accountability.

66. That can be applied to the plight of those living in extreme poverty, who continue in most societies to be marginalized, stigmatized and the objects of condescension and charity. Recognition of their human rights does not guarantee them food, education, or health care, but it does acknowledge their dignity and agency, empower them and their advocates and provide a starting point for a meaningful debate over the allocation of societal resources in contexts in which their interests have been systematically ignored. It is indeed a technocratic illusion to assume that those dimensions can be ignored as long as bureaucratically directed projects and policies are well designed by the staff of the Bank. Similarly, it makes a huge difference if education reforms are premised on the right to education of the beneficiaries, as opposed to the good intentions or largesse of the World Bank.

[46] World Bank and OECD, *Integrating Human Rights into Development*.

67. Finally, it is not necessary in the present report to repeat the powerful ethical, legal and instrumentalist arguments that have been made in the extensive literature on integrating human rights into development policies and programmes. Ironically, nowhere have the arguments been more systematically explored than in the World Bank's own publication on integrating human rights into development, produced in collaboration with OECD.

VI. Conclusions and recommendations

A. Conclusions

68. For most purposes, the World Bank is a human rights-free zone. In its operational policies, in particular, it treats human rights more like an infectious disease than universal values and obligations. The biggest single obstacle to moving towards an appropriate approach is the anachronistic and inconsistent interpretation of the "political prohibition" contained in its Articles of Agreement. As a result, the Bank is unable to engage meaningfully with the international human rights framework, or to assist its member countries in complying with their own human rights obligations. That inhibits its ability to take adequate account of the aspects of its work within countries relating to the social and political economy and contradicts and undermines the consistent recognition by the international community of the integral relationship between human rights and development. It also prevents the Bank from putting into practice much of its own policy research and analysis, which points to the indispensability of the human rights dimensions of many core development issues.

69. One of the most striking aspects of the relationship between the World Bank and human rights is how little thought has been given to what a human rights policy might look like in practice. As a result, the prospect has assumed bogeyman status and Bank officials regularly suggest that if there was such a policy in place, truly draconian consequences would follow. While it might be argued that such fears reflect either fear-mongering or a lack of understanding, or both, the real problem is that there has been nothing even vaguely resembling a blueprint on the table. Whether the Bank ultimately maintains, adjusts or changes its existing policy, it is essential that the policy should be principled, compelling and transparent. The recommendations that follow provide some indication as to what a human rights policy for the Bank could look like in practice.

B. Recommendations

70. No outsider can prescribe an ideal recipe for the Bank to follow in adopting a human rights policy. There are many options and paths that could reasonably be taken. The Bank is a very special organization and it will need a carefully tailored policy that takes adequate account of the many concerns that will undoubtedly be expressed. Most of all, there needs to be a transparent discussion, based on carefully thought-through proposals.

71. The initiative must come from the President and the staff, as has been the case in relation to almost every major policy initiative of this kind. The Executive Board cannot be expected to meaningfully debate an abstract proposition in the absence of a detailed exploratory analysis.

72. At the same time, member countries and especially Executive Board members, need to begin to grapple seriously with what a policy should look like, rather than simply saying they are for or against any such policy.

73. Governments especially need to explore ways to ensure that there is policy coherence between the positions they take in human rights forums and those they take in the context of the Bank.

74. The legitimate concerns held by Governments, Bank staff and other stakeholders need to be put on the table and fully discussed. There are certainly hard questions to be addressed. The experience of the many other international organizations which have adopted human rights policies over the past decade or more should greatly help to dispel many of the concerns expressed by Bank officials.

75. Diverse civil society actors also needs to think through in a more systematic and nuanced way what exactly they would like to see from a human rights initiative. In the view of the Special Rapporteur, it is debatable whether some of the roles that the Bank has been called upon to undertake in the past are appropriate. The Bank cannot be expected to carry the burden of the expectations of every human rights demand that might be made in a given situation. There are limits to what can reasonably be expected of it and there are legitimate questions related to its mandate and the respective roles that should be played by different actors. Placing unreasonable demands on the Bank merely reinforces the fears of those who are currently resisting change in that area.

76. The Bank needs to remove the roadblock that has been erected by its anachronistic, artificial and unjustifiable interpretation of the political prohibition contained in its Articles of Agreement. Admittedly, it is conceivable that the Bank might be tempted to pursue some issues using prohibited political approaches and would need to guard against them. However, positive measures designed to promote respect for obligations based on human rights treaties that are binding upon borrowing States would generally not cross such a line. Of course, much will depend on how the issue is approached, but a blanket prohibition on any such action as being political is wholly unwarranted. Just as the phrase "economic considerations" has been interpreted to accommodate Bank measures to combat corruption and to promote the rule of law and criminal justice reform, so too can the phrase accommodate a policy which takes account of the economic consequences of ignoring or violating human rights in a given project.

77. The starting point for any policy is to acknowledge that human rights are relevant to the twin goals of the Bank. Exactly how that relevance should manifest itself in different situations and policies is a matter to be explored and developed over time. It makes sense in such contexts to move with all deliberate speed. In the longer term, a change of culture within the Bank would be required, as has often been remarked in relation to safeguards and other

concerns by internal evaluation mechanisms. When UNICEF adopted a policy grounded in the rights of the child, it took considerable time for the internal culture to change, just as it will in the case of others. Training will be an essential component, but if any organization is capable of mastering a new policy direction of this kind, it is the Bank.

78. Engagement with human rights experts and mechanisms should become routine. A good starting point would be for the Human Rights Council to invite the President of the Bank to address it and engage in a dialogue with its members. The Bank should also set up a forum in which it could engage human rights leaders on a regular basis, just as it has done with religious and faith leaders.

79. The overarching policy principle, already accepted in relation to safeguards, is that the Bank should "do no harm" through its own involvement. How far the Bank can or should go in trying to bring about government policies that have no direct bearing on what it is supporting is open to debate. Again, some of the demands made of it in this area appear to be both unrealistic and counterproductive.

80. The Bank should have a due diligence policy that spells out some of the circumstances under which it would be unable to continue providing support for a given project. The United Nations due diligence policy in relation to peacekeeping is of direct relevance here. There is reason to believe that in many cases that subsequently became controversial, the Bank could have promoted relatively minor changes to make some of the projects much less vulnerable to criticism on human rights grounds. As the old aphorism says, a stitch in time saves nine.

81. All stakeholders need to rethink the approach to "sanctions" imposed upon borrowing States in response to human rights violations. In the past, such policies have too often been arbitrary, inconsistent, and even counterproductive. If the Bank were to sanction every member State that is accused of a serious human rights violation it would have very few borrowers and just as few lenders. As long as sanctions are considered to be the main element in a human rights policy, many Governments will continue to resist progress in this area. Based on experience to date, their position is not difficult to understand. The debate needs to move beyond the sanctions mentality and take a far more positive and nuanced turn.

82. It should be assumed that measures to enforce respect for human rights are the prerogative of the Human Rights Council and of the other appropriate United Nations political organs, and not of the World Bank.

83. Another key principle in any Bank policy should be to encourage and assist Governments to meet their existing obligations under international law in relation to human rights. Other international organizations explicitly seek to do this and the Bank has long done it in relation to international environmental treaty obligations.

84. In general, the policies of the Bank should emphasize the ways in which it can provide positive support, advice and assistance to States in relation to human rights. It could start by establishing a programme to assist

Governments that wish to establish domestic institutional mechanisms to promote the integration of human rights into development policies.

85. **The Bank should adopt a policy addressing economic, social and cultural rights as human rights. Its frequent claims to be almost inadvertently doing this already are not persuasive, but there is much that it could do to promote a basic programme in this area, which would add enormous value to what the international community has so far been able to achieve.**

86. **Finally, those calling upon the World Bank to adopt a human rights policy need to pay equally focused attention to the policies being adopted by other multilateral lenders. The recently established New Development Bank and Asian Infrastructure Investment Bank are particularly relevant in that regard.**

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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Effects of foreign debt and other related financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Juan Pablo Bohoslavsky, submitted pursuant to Human Rights Council resolution 25/16.

* A/70/150.

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Report of the Independent Expert on the effects of foreign debt and other related financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights

Summary

The present report provides an overview of the activities undertaken by the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, from August 2014 to July 2015.

During the reporting period the Independent Expert submitted two thematic reports to the Human Rights Council on financial complicity and illicit financial flows and human rights, undertook official visits to Iceland and China and participated in the third International Conference on Financing for Development in Addis Ababa. In addition, he contributed to the study of the Advisory Committee of the Human Rights Council on vulture funds and human rights, as requested by the Human Rights Council in its resolution 27/30.

The Independent Expert also contributed to the ad hoc committee established by the General Assembly in its resolution 69/247, tasked with elaborating a multilateral legal framework for sovereign debt restructuring processes, through a process of intergovernmental negotiations. In this context, the report concludes with reflections by the Independent Expert on the principle of *pacta sunt servanda* (often translated as "agreements (or promises) must be kept") in connection with human rights and the principles of legitimacy and sustainability in the context of sovereign debt obligations, with particular attention to debt restructuring. In his view, an "absolutist" view of the principle of *pacta sunt servanda* does not form part of positive law nor is it part of customary international law. Debt contracts exist in a broader legal and economic universe, in which human rights law, the agency relationship between States and their populations and economic constraints interact with the rights of creditors. This dialogue should take place within the legal framework provided in international law for the solution of normative conflicts.

I. Introduction

1. The present report is submitted to the General Assembly pursuant to Human Rights Council resolution 25/16, in which the Council requested the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights to report regularly to the Council and the Assembly. The report provides an overview of the activities undertaken by the Independent Expert between August 2014 and July 2015, followed by reflections of the Independent Expert on the legitimacy of the principles of *pacta sunt servanda* (translated as "agreements (or promises) must be kept"), legitimacy, sustainability and human rights in the context of international debt obligations.

2. In addition to his core mandate, as outlined in Human Rights Council resolution 25/16, the Independent Expert was requested by the Council, in its resolutions 25/9, 26/7, 27/30, 28/5 and 28/8, to: (a) consider, inter alia, the impact of illicit financial flows on the enjoyment of human rights; (b) contribute to and participate in the third International Conference on Financing for Development and its follow-up process; and (c) provide inputs to the work of the Advisory Committee of the Human Rights Council, which has been requested to undertake a study on the impact of so-called vulture funds on the enjoyment of human rights, a topic that has been followed by the mandate holder for several years.

3. Pursuant to General Assembly resolution 69/247, the Ad Hoc Committee on Sovereign Debt Restructuring Processes has been established for the purpose of negotiating a multilateral legal framework on sovereign debt restructuring processes. The outcomes of the sessions of the Ad Hoc Committee have given new impetus to the discussions being held at the international level relating to the need for timely, orderly, effective and fair debt restructuring procedures. Such debt restructuring procedures should be compatible with existing human rights obligations and standards, as stressed by the Human Rights Council in its resolution 27/30.

II. Activities by the Independent Expert

A. Thematic reports

4. Pursuant to Human Rights Council resolutions 25/9 and 25/16, the Independent Expert submitted two thematic reports to the twenty-eighth session of the Human Rights Council (A/HRC/28/59 and A/HRC/28/60 and Corr.1).

5. The first report, on financial complicity (A/HRC/28/59), focused on the question of lending to States engaged in gross human rights violations. The report was intended to contribute to a better understanding of when financial support may contribute to, or sustain the commission of, large-scale gross human rights violations by sketching a rational choice framework premised on the incentives of authoritarian Governments and private and official lenders. In the report, the Independent Expert reviewed the existing empirical evidence of the relationship between sovereign financing, human rights practices and the consolidation of Governments engaged in gross violations of human rights. He also presented some interim conclusions and invited stakeholders to discuss them. The Independent

Expert will address the legal and policy implications of financial complicity in a future study.

6. The second report of the Independent Expert (A/HRC/28/60 and Corr.1) consisted of an interim study on illicit financial flows, human rights and the post-2015 development agenda. The study highlighted the fact that illicit financial flows generated through crime, corruption, embezzlement and tax evasion represent a major drain on the resources of developing countries, reducing tax revenues and the scope for progressive taxation, hindering development and the rule of law, exacerbating poverty and inequality and undermining the enjoyment of human rights. Tax evasion and abuse are considered to be responsible for the majority of all illicit financial outflows, followed by illicit financial flows relating to criminal activities, such as drug trafficking, human trafficking, the illicit arms trade, terrorism and corruption-based illicit financial flows. According to some estimates[1] developing countries lost $991 billion in illicit financial outflows in 2012, and those flows have increased in real terms at a rate of 9.4 per cent per annum over the period from 2003 to 2012. According to the figures provided, total annual losses were substantially higher than the estimated yearly costs of achieving the Millennium Development Goals.

7. The report outlined how illicit financial flows undermine the enjoyment of economic, social, cultural, civil and political rights and emphasized the need for: (a) due diligence and due process in the fight against illicit financial flows; (b) better protection for witnesses and whistle-blowers; and (c) incorporating human rights considerations in the management of returned stolen assets. The report also contained recommendations on how the goal of curbing illicit financial flows could be operationalized within the United Nations post-2015 development agenda.

8. On 26 March 2015, the Human Rights Council adopted resolution 28/5, in which it welcomed the interim study of the Independent Expert and requested him to convene an experts meeting to inform his final study. That meeting is expected to take place in the fourth quarter of 2015 in New York.

B. Country visits

9. Since taking up his position on 2 June 2014, the Independent Expert has sent requests to make visits to the Governments of China, Egypt, Greece, Iceland, Jamaica, Tunisia and Zambia. He has also requested official visits to various institutions of the European Union to discuss the impact of economic adjustment programmes on Greece and other countries members of the European Union.

10. The Independent Expert is grateful for the official invitations from the Governments of China, Greece and Iceland.[2] He visited Iceland from 8 to 15 December 2014 and visited China from 29 June to 6 July 2015. His visit to Greece is scheduled to take place from 30 November to 7 December 2015. He hopes to be able to visit different institutions of the European Union in early 2016 and to visit countries in other regions, including Africa and Latin America and the Caribbean, in 2016.

[1] See A/HRC/28/60 and Corr.1, para. 10.

[2] As of 24 July 2015.

11. During his visit to Iceland, the Independent Expert paid close attention to how the banking crisis had affected the right to work, social security, housing, health and education and particular social groups. In his report,[3] he concluded that while Iceland had managed the crisis better than many other countries, and had responded overwhelmingly in compliance with its international obligations, there are certain gaps that should be addressed. He recommended that the legal and institutional framework of Iceland be further strengthened in order to prevent a recurrence of a similar crisis and that attention be paid to certain vulnerable groups, such as highly indebted individuals, people living in rented housing, migrants and children living in single-parent households.

12. In the context of his visit to Iceland, the Independent Expert also identified several good practices that States facing a financial crisis can adopt in order to prevent or reduce negative human rights impacts in the context of economic adjustment programmes. He concluded that international organizations and other countries could learn from the particular path chosen by Iceland, which included the protection of its core social welfare system, efforts to ensure citizen participation in the decision-making process and establishing political, administrative and judicial accountability.

13. This visit contributed to one of the six thematic priorities outlined by the Independent Expert in his previous report to the General Assembly,[4] which included identifying good practices regarding how States could avoid negative human rights impacts in the context of debt crises and economic adjustment programmes. While Iceland still faces several challenges in fully overcoming the legacy of the 2008 banking collapse, it is the view of the Independent Expert that other countries could learn from the rich experience of Iceland on how to minimize negative human rights impacts in the context of a financial crisis.

14. From 29 June to 6 July 2015, the Independent Expert conducted his second official visit, to China, in order to assess how its international lending practices contribute to the realization of human rights, in particular economic, social and cultural rights, in borrowing countries. In his end-of-mission statement,[5] the Independent Expert welcomed China's leadership role in the establishment of two new multilateral development banks, the Asian Infrastructure Investment Bank, in Beijing, and the New Development Bank, in Shanghai. He also stressed that a human rights focus would upgrade China's international lending and underlined the need to avoid, mitigate or compensate for negative social, environmental and human rights impacts that may result from international lending and project financing. A comprehensive report on the visit will be presented to the Human Rights Council at its thirty-first session in March 2016.

15. The Independent Expert would like to thank the Governments of China and Iceland for their full cooperation, as well as relevant stakeholders who made themselves available during his visits and the fruitful, open and frank discussions he had in both countries with various interlocutors.

[3] See A/HRC/28/59/Add.1.

[4] A/69/273.

[5] The end-of-mission statement of the Independent Expert on his visit to China is accessible from http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16203&LangID=E.

C. Communications and public statements

16. The Independent Expert exchanged views with Member States in bilateral meetings and through communications on issues brought to his attention. In addition, he issued several public statements on matters which, in his view, required public attention.

17. On 20 August 2014, the Independent Expert and the Special Rapporteur on extreme poverty and human rights sent three communications to the Governments of Argentina and the United States of America and to the main litigating partner, NML Capital Limited, concerning the human rights impact of recent orders issued by United States courts. The letters expressed concern that the rulings may risk pushing Argentina into a debt crisis, with negative implications for the economic, social and cultural rights of its people and that they may also impede necessary debt restructuring in other contexts. The communications argued that such vulture fund litigation, including the court orders secured by NML Capital Limited, may prevent indebted countries from using resources freed up by debt relief for their development and poverty reduction programmes and diminish their capacity to create the conditions necessary for the realization of human rights for their people. The Independent Expert would like to thank Argentina and the United States for the responses received and regrets that NML Capital Ltd. has, to date, not sent any formal reply to his letter.[6]

18. On 27 November 2014, United Nations experts issued a media statement, stressing that if Argentina paid NML Capital Ltd. according to the rulings of the United States courts, the creditor would receive $832 million. In addition Argentina could face demands of up to $140 billion from other holdouts and holders of restructured bonds who could demand repayment on equal terms.[7]

19. The experts voiced their concern about the disruptive impact of such litigation, both in terms of human rights and the sustainability of debt agreements supported by the majority of creditors. In the view of the Independent Expert, the case highlights the need for better rules, allowing predictable and efficient debt restructuring, and the need to address human rights impacts in litigation procedures with vulture funds.

20. The Independent Expert notes that the negotiations between the Government of Greece and lending institutions were emblematic for the absence of clear and human-rights-based rules to address unsustainable debt situations and to ensure timely, orderly, effective and fair debt restructuring procedures. Since the mission to Greece by the previous Independent Expert, Cephas Lumina, in April 2013,[8] the situation, in particular for vulnerable population groups, appears to have worsened, with the total unemployment rate reaching 25 per cent and more than 50 per cent in the case of youth unemployment. There has been a serious deterioration of the social security system, and concerns about access to health services and facilities, as well as medicines, food and housing, are acute. Furthermore, the number of people

[6] See Communications report of Special Procedures, A/HRC/28/85, cases ARG 2/2014, USA 15/2014 and OTH 10/2014.

[7] "Human rights impact must be addressed in vulture fund litigation – UN experts", 27 November 2014, available from http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15354.

[8] See A/HRC/25/50/Add.1.

at risk of falling into poverty and social exclusion has increased to 35.7 per cent, the highest percentage in the eurozone.[9] In fact, the austerity measures appear to have exacerbated the social crisis in Greece and have failed to stimulate the national economy to the benefit of the Greek population.

21. On 2 June 2015, the Independent Expert urged the Government of Greece and its international lenders to make sure that the burden of adjustment is shared in a fair manner, in compliance with the international human rights obligations of Greece and creditor States under the International Covenant of Social and Economic Rights, the European Social Charter and other international human rights instruments. The Independent Expert welcomed the establishment of a debt audit commission by the Greek Parliament and reminded international organizations and international financial institutions that human rights must be respected when responsibilities are delegated by States to international bodies, such as the European Stability Mechanism and the European Central Bank. In the view of the Independent Expert, it is time to acknowledge that further debt relief will be necessary to prevent Greece from remaining in an economically and politically unhealthy dependence on creditor institutions for decades.[10]

22. On 15 July 2015, the Independent Expert urged the European institutions, the International Monetary Fund and the Greek Government to fully assess the impact of possible new austerity measures to ensure that they do not come at a cost to human rights. He stressed that priority should be given to ensuring that everybody in Greece has access to core minimum levels of economic, social and cultural rights, including the right to health care, food and social security.[11] However, recent developments appear to have gone in the opposite direction, with the monetary authorities imposing restrictions that may endanger the supply of medication, energy and food imports. The Independent Expert is also concerned about the impact of the crisis on refugees and immigrants, whose number has increased as a result of the internal armed conflicts and violations of international humanitarian and human rights law in the Middle East and other regions.

23. The Independent Expert would like to thank the Government of Greece for inviting him to carry out a country visit from 30 November to 7 December 2015 to study the situation in detail.

D. Submission to the Advisory Committee of the Human Rights Council

24. On 3 October 2014, the Human Rights Council adopted resolution 27/30, in which it condemned the activities of vulture funds for the direct negative effect that the debt repayment to those funds, under predatory conditions, has on the capacity of Governments to fulfil their human rights obligations. The Council also requested

[9] Data published by Eurostat on the basis of the 2008-2013 EU-SILC Survey, available from http://epp.eurostat.ec.europa.eu/portal/page/portal/income_social_inclusion_living_conditions/introduction.

[10] See "Greek crisis: Human rights should not stop at doors of international institutions", 2 June 2015, available from http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16032.

[11] See "'Not at the cost of human rights'— UN expert warns against more austerity measures for Greece", 15 July 2015, available from http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16238.

its Advisory Committee to prepare a research-based report on the activities of vulture funds and their impact on human rights, seeking the views and inputs, inter alia, from the Independent Expert and other stakeholders.

25. In line with that resolution, on 25 February 2015, at the fourteenth session of the Advisory Committee, the Independent Expert presented a paper on vulture funds and human rights,[12] in which he recommended that the Committee: (a) undertake a more comprehensive empirical analysis about litigation by vulture funds and their impact on human rights, covering not only heavily indebted poor countries; (b) carry out a more comprehensive legal analysis from the perspective of international law and human rights law; and (c) elaborate suggestions for States to consider regulative, legislative or other measures within their jurisdictions in order to limit the disruptive effects of vulture fund litigation.

E. Third International Conference on Financing for Development

26. In its resolution 25/9, the Human Rights Council requested the Independent Expert to participate in the third International Conference on Financing for Development, held in Addis Ababa from 13 to 16 July 2015. In this context, on 26 May 2015, the Independent Expert submitted his views on the draft outcome document of the Conference under negotiation by Member States and later participated in two round tables during the Conference, as well as relevant side-events.[13]

27. The Independent Expert stressed the importance of the International Conference for the mobilization of necessary resources to ensure that the future sustainable development goals of the United Nations can be met. Human rights must be at the core of development financing, ensuring the enjoyment of decent life for everyone, free from hunger and with access to education, health care, housing and drinking water. The main message was that international development financing is not just about more resources. In this context, he reiterated the principle enshrined in the United Nations Declaration on the Right to Development, which is that the human being is the central subject of development and should be its active participant and beneficiary.

28. One of the ambitions of the conference was to ensure that international agreements, rules and standards are consistent with each other and with progress towards the soon-to-be adopted sustainable development goals. The Independent Expert welcomed the fact that the outcome document of the Conference, the Addis Ababa Action Agenda,[14] contained an upfront commitment to human rights, but regretted that this commitment did not always find adequate reflection in some of its substantive sections. He appreciated the emphasis that the Addis Ababa Action Agenda gives to combating illicit financial flows and improving the fairness, transparency and efficiency of taxation systems, but regretted that language on

[12] See "Vulture funds and human rights", 25 February 2015, available from http://www.ohchr.org/Documents/Issues/Development/IEDebt/VultureFundsAndHumanRights2014.pdf.

[13] See "Human rights must be at the core of development financing ", comments by Juan Pablo Bohoslavsky on the revised draft outcome document of the third International Conference on Financing for Development", available from http://www.ohchr.org/Documents/Issues/IEDebt/Paper3FFD22May2015.pdf.

[14] A/CONF.227/L.1, annex, endorsed by the General Assembly on 27 July 2015.

tackling the facilitating environment of illicit financial flows in recipient countries, as well as on secrecy jurisdictions and safe havens, remained relatively weak. Furthermore, he had also hoped for a clearer cut, time-bound and measurable commitment to reduce the size of illicit financial flows by 2030.

29. The Independent Expert welcomes the calls incorporated in the Addis Ababa Action Agenda for debt restructurings to be timely, orderly, effective, fair and negotiated in good faith, with the objective of restoring public debt sustainability and preserving access to finance under favourable conditions so that countries can achieve sustainable development. He voiced his disappointment, however, that the chapter on sovereign debt omits any reference to human rights, most notably the guiding principles on foreign debt and human rights.[15]

F. Multilateral legal framework for debt restructuring processes

30. On 5 September 2014, the Independent Expert sent a letter to the Chairman of the Group of 77 and China[16] expressing his views on an initiative by the General Assembly to establish an international legal regulatory framework for sovereign debt restructuring processes. In his letter, he supported the idea that the United Nations system is the correct forum to discuss how to fill the international legal void with regard to sovereign debt restructuring. He also explained the legal need to minimize vulture fund litigation and highlighted relevant international human rights standards in the context of debt restructurings.

31. The Independent Expert also recalled that the issues of foreign debt, debt relief, debt restructuring and excessive demands by so-called "vulture funds" have been covered by his mandate for many years and have been the subject of resolutions of the Human Rights Council, including resolutions 20/10, 23/11 and 27/30.

32. On 26 January 2015, the Independent Expert provided a written submission[17] to the Ad Hoc Committee on Sovereign Debt Restructuring Processes established by the General Assembly in its resolution 69/247. The Committee is tasked with elaborating a multilateral legal framework for sovereign debt restructuring processes through a series of intergovernmental negotiations. In his submission, the Independent Expert discussed the human rights benchmarks States should consider in drafting the multilateral legal framework, and he proposed the following six human rights benchmarks:

(a) The new legal framework should include an explicit reference to debt restructuring and the need to make it compatible with existing human rights obligations and standards;

(b) Risk assessments and debt sustainability analysis carried out prior to a debt restructuring should include provisions to ensure human rights impact assessments;

[15] A/HRC/20/23, annex.

[16] Available from http://www.ohchr.org/Documents/Issues/IEDebt/letter_Chairman_of_the_Group_G77.pdf. See SPB/SHD/GT/ff.

[17] "Towards a multilateral legal framework for debt restructuring: Six human rights benchmarks States should consider", available from http://www.ohchr.org/Documents/Issues/Development/IEDebt/DebtRestructuring.pdf .

(c) The future multilateral framework on debt restructuring should adequately address negative human rights impacts caused by hold-outs;

(d) Debt restructuring should ensure that minimum essential levels for the enjoyment of economic, social and cultural rights can be satisfied even in contexts of financial crisis; and that retrogressive measures affecting the enjoyment of these rights should be avoided;

(e) The human rights principles of impartiality, transparency, participation and accountability should be reflected in a new legal framework for debt restructuring;

(f) International and regional human rights protection mechanisms, national human rights institutions and civil society organizations should be play a role in the decision-making processes with regard to debt restructurings.

III. Reconciling debt obligations with human rights through *pacta sunt servanda*

33. With the aim of contributing to the current debate in the General Assembly on the legal framework for debt restructuring, the Independent Expert presents below some reflections on the scope of a principle of international law — *pacta sunt servanda* — the principle that agreements must be kept — in the context of foreign debt obligations and in the light of international law, including international human rights law.

34. These considerations might be particularly relevant to interpreting the concrete content of two specific principles, legitimacy and sustainability, identified by the Ad Hoc committee on Sovereign Debt Restructuring Processes at its 3rd meeting, held in New York on 27 July 2015.[18]

A. The principle of *pacta sunt servanda* in context

35. The principle of *pacta sunt servanda* is often taken to be a general and absolute rule of law, including of international law. It is understood as one of the legal and theoretical underpinnings that oblige countries to adhere to debt payment schedules no matter the circumstance. *Pacta sunt servanda* may be commonly accepted as a foundation in commercial transactions, leading to a generalized assumption that sovereign debt should be treated as any other private obligations. However, in the view of the Independent Expert, there are several differences.

36. Any presentation of this rule in an absolutist manner (denying the option to discuss possible exceptions to the repayment obligation), without an understanding of the underlying sovereign context, is often an oversimplification and therefore incomplete. In the opinion of the Independent Expert, this discussion is not purely theoretical but has broad financial implications, as the scope and strength of the principle of *pacta sunt servanda* in the realm of sovereign debt can define, to a great extent, who bears the financial losses in debt restructurings.

[18] See A/AC.284/2015/L.1.

37. It is acknowledged that any contract between two or more parties is usually subject to the rules of the broader community. Thus, contracts will not be enforced if they violate the laws and values of the larger group, even if the contracting parties originally agreed to the terms. This is true whether the relevant contracting party is an individual, a corporation or any other entity bound by these broader rules. In the Independent Expert's view, there is no reason to suppose that this same limitation is any less relevant when the contracting party is a sovereign State. Hence, it appears that the *pacta sunt servanda* principle, in the debt restructuring context of this discussion, may have some built-in boundaries set by larger norms, such as international human rights law, as described in the paragraphs below.

38. Sovereignty of the State adds an additional layer of analysis to the conditional element present in any contract. Unlike an individual person who might sign a debt contract, the sovereign State itself is not a "natural" entity that exists in the world — one does not meet a sovereign State walking down the street, for example. Rather, it is an entity ultimately recognized, formalized, even created through a series of laws, traditions and practices, including both international law as well as domestic laws and the traditions of the State itself. As such, the existence and activities of a sovereign State ultimately and necessarily remain intrinsically embedded in this broader legal framework. Or, in other words, any State's debt agreement with creditors implicitly rests upon the legal framework that defines and limits the sovereign State itself.[19]

39. This introduces the question of the appropriate way to understand sovereignty and sovereign obligations with respect to debts. Any legal definition of sovereignty seems to be a characterization of the relationship between a country's Government and its people — between the officials who enter into a debt contract and the population (taxpayers) who ultimately must pay for that contract. Although there are multiple approaches to sovereignty that have developed through different historical periods, contemporary understandings of sovereign statehood often recognize a form of "agency relationship" between government actors (the agent) and the population of the sovereign State (the principal, on whose behalf and in whose interests Government officials must act). This allows for a broad array of governmental forms and does not justify unwarranted interference in internal affairs. Nowadays, it seems clear that a State's population is not merely a resource available for exploitation by the Government. Governments, no matter how they are organized, ultimately have responsibility for and obligations to their population.

40. This agency relationship is already accepted in the context of domestic contracts for corporations and other similar entities. A legal system specifies the conditions under which an action taken by the agent (a company official, for example) can be attributed to and then imposed upon the underlying principal (the company and its shareholders). Only contracts that fall within the scope of the principal-agent relationship, no matter how it is defined by the applicable laws, will

[19] The Independent Expert wishes to thank Professor Odette Lienau, with whom he has consulted for this section of the report (see, in particular, her publication, *Rethinking Sovereign Debt: Politics, Reputation, and Legitimacy in Modern Finance* (Harvard University Press, 2014): for a detailed consideration of the ways in which sovereign debt and reputation are intrinsically linked to different conceptions of sovereign statehood, see especially pp. 5-10 and pp. 20-24. Although Professor Lienau refers to illegitimate debt as an example, her arguments can be applicable to sovereign debt more generally).

be enforceable. Sovereign statehood can be characterized as a similar and essential, if generally unremarked upon, agency relationship in the international legal arena.[20]

41. The general principle of *pacta sunt servanda* necessarily includes built-in conditions and limitations; it cannot possibly be absolute, particularly in the sovereign context. The fact that there has been much debate over whether states generally adhere to international law and under which conditions is a testament to the existence of these potential conditions and limitations. The multifaceted nature of sovereign debt makes this debate even more contentious. One set of limitations may arise from the general laws and values that constrain all actors, preventing them from binding themselves or others in unacceptable ways. A second set of conditions may arise from the uniquely sovereign nature of the State itself, and its agency relationship and underlying obligations to its own population. A third constraint may arise from exceptions to the substantive obligation in that the accumulation of interest on debt may have occurred due to conditions outside of the State's control, which could include a widespread global impact, as was the case in the oil shock during the 1970s or could be due to a downturn in terms of trade for a particular State in a competitive global environment. This broader context and set of rules should shape any interpretation of sovereign debt contracts notwithstanding the background principle of *pacta sunt servanda*.

B. The obligations of States and others to their populations is increasingly accepted

42. In the view of the Independent Expert, the idea of sovereign States as entities that are embedded in broader rules and values and as fundamentally responsible for and obligated to their own populations seems widely accepted. It is true that in earlier historical periods, State populations have been viewed simply as subjects to Government rule and, at least implicitly, similar to an available resource for its use and control. However, this view appears to have been gradually rejected by international law and practice, in part through increasing recognition of human rights at the international level.

43. Even in the economic and financial arena, actors have acknowledged the essential relationship between Governments and their populations. For example, the greater focus on cases in which an official subverts his or her duty to the State and population in favour of private gain offers one key area in which this relationship is evident. The attention to corruption results in part from pragmatic concerns about its potential deleterious effect on economic development. But it also connects to a more general and fundamental recognition of the agency relationship at the core of contemporary sovereign statehood. In the 2012 update of its governance and anti-corruption strategy, the World Bank noted that the "contours of a new social contract are emerging. Citizens are seeking a relationship with their government based on transparency, accountability, and participation."[21]

44. This understanding is also articulated in the United Nations Conference on Trade and Development (UNCTAD) Principles on Promoting Responsible Sovereign

[20] See Leinau, Odette, *Rethinking Sovereign Debt: Politics, Reputation, and Legitimacy in Modern Finance*, Harvard University Press, 2014.

[21] See World Bank Group, "Strengthening Governance: Tackling Corruption — The World Bank Group's Updated Strategy and Implementation Plan" (Washington, D.C.) 2012.

Lending and Borrowing, adopted in 2012, in which it is noted that, Governments "are agents of the State and, as such, when they contract debt obligations, they have a responsibility to protect the interests of their citizens".[22] Similarly, the Principles state that lenders "should recognize that government officials involved in sovereign lending and borrowing transactions are responsible for protecting public interest (to the State and its citizens for which they are acting as agents)." (see article 1). The United Nations guiding principles on foreign debt and human rights express a similar opinion, that every "Borrower State should conduct a transparent and participatory needs assessment, as part of its annual debt strategy, in order to ascertain whether it has a genuine need to obtain new loans" and that all "lenders should satisfy themselves that a Borrower State has made an informed decision to borrow and that the loan is to be used for a public purpose".[23]

45. Even major private financial actors have, through the lens of risk management, acknowledged the intended social purpose for development finance and the existence of possible limitations in international finance, as seen in part by their adoption of guidelines for socially responsible project finance lending. The June 2013 version of the "Equator Principles", drafted in conjunction with the International Finance Corporation, includes a recognition that participants' "role as financiers" provides an opportunity to engage in socially responsible development, "including fulfilling our responsibility to respect human rights."[24] In short, there has been more a vocal recognition of the obligations that international financial institutions and non-State actors owe to individuals affected by their operations, even when dealing with Governments acting as economic (rather than explicitly political or diplomatic) actors.

C. An absolutist view of *pacta sunt servanda* has not become customary international law

46. Finally, it is also worth highlighting that an absolutist view of *pacta sunt servanda* in the sovereign debt field cannot be understood to be a feature of customary international law. Customary international law would be identified through a combination of State practice and a belief in the existence of a legal obligation (*opinio juris*) to continue payment under all circumstances.[25] To begin with, it is certainly the case that gunboat diplomacy was previously employed by dominant States to enforce sovereign debts on weaker States, which were often reluctant to pay, until the practice of using force to collect controversial debts was outlawed by the Hague Convention Respecting the Limitation of the Employment of Force for the Recovery of Contract Debts (1907). It also true that under the current monetary regime States have defaulted on their sovereign debts when continued repayment becomes untenable. Thus, the State practice of default and non-payment

[22] UNCTAD, Principles on Promoting Responsible Sovereign Lending and Borrowing (January 2012), article 8. See Esposito, Carlos, Li, Yuefen and Bohoslavsky, Juan Pablo (eds.), *Sovereign Financing and International Law: The UNCTAD Principles on Responsible Sovereign Lending and Borrowing*, Oxford University Press, 2013.

[23] A/HRC/20/23 and Corr.1, annex, paras. 36 and 38.

[24] The Equator Principles, June 2013 (www.equator-principles.com).

[25] See Bohoslavsky, Juan Pablo, Li, Yuefen and Sudreau, Marie, "Emerging Customary International Law in Sovereign Debt Governance?", *Capital Markets Law Journal*, 2013, vol. 9, No. 1.

(or partial payment) is itself a fairly regular occurrence in sovereign debt,[26] just as in the consumer and business/company debt markets. Furthermore, to the extent that States have paid their debt obligations, seeming to act more in line with absolutist approaches to *pacta sunt servanda*, this behaviour has not necessarily been due to any sense of international legal obligation (or *opinio juris*) that might require such payment. To the extent that a payment obligation has been legally upheld, it has been due to particular domestic court interpretations of the relevant contract.[27]

47. In the fields of economics and political science, it is fairly well established that attention to reputation and creditworthiness in capital markets has been central to sovereign debt repayment.[28] Countries are concerned that, if they fail to make debt payments, they will be unable to access capital at a reasonable cost in the future. This pragmatic reaction to markets, however, should not be confused with an absolute legal obligation to repay. Indeed, it exists entirely independently of any legal insolvency regime that might support and enforce the collective resolution of unpayable debt. This is why, in the domestic context, companies and individuals may avoid or defer the protection of insolvency proceedings if they can consensually resolve debt problems with their creditors. They balance the protection offered by the insolvency regime and the greater growth that can result from a more sustainable financial foundation with the possibility of higher capital costs, at least in the short term.[29] This market element does not preclude the possibility of a legal insolvency regime, nor would it be adversely affected by such a regime. Indeed, the two are separate and entirely complementary.

D. *Pacta sunt servanda* comprehensibly understood in debt restructurings

48. The Independent Expert argues that there is little reason to think that the rule of sovereign debt payment, derived from the more general principle of *pacta sunt servanda*, is absolute. Any contract is necessarily embedded in and conditioned by the broader rules and values of the community. In addition, the uniquely sovereign character of Governments implies an agency relationship with the underlying population that may obligate the Government further. There is no reason to think that past practice has created international law that would stand in the way of a sovereign debt workout regime attentive to these issues. And in practice a number of

[26] See, inter alia, Rogoff, Kenneth and Zettelmeyer, Jeromin, "Bankruptcy Procedures for Sovereigns: A History of Ideas, 1976-2001", IMF Staff Papers, 2002; Reinhart, Carmen M. and Rogoff, Kenneth, *This Time is Different: Eight Centuries of Financial Folly* (Princeton University Press, 2011); Trebesch, Christoph, Michael G. Papaioannou, Michael G, and Das, Udaibir S., "Sovereign Debt Restructurings 1950-2010: Literature Survey, Data, and Stylized Facts", IMF Working Papers 12/203 (2012).

[27] The globally controversial decisions of courts in the United States of America in the dispute between Argentina and NML Capital, Ltd. are only the most recent of these interpretations. See A/HRC/28/85, cases ARG 2/2014, USA 15/2014 and OTH 10/2014.

[28] See Tomz, Michael, *Reputation and International Cooperation: Sovereign Debt Across Three Centuries* (Princeton University Press, 2007) (general importance of reputation); and Odette Lienau, *Rethinking Sovereign Debt* (interaction of reputational effects with ideas of sovereignty and creditor structures).

[29] See Lienau, Odette, "The Longer-Term Consequences of Sovereign Debt Restructuring," in *Sovereign Debt Management*, Buchheit, Lee and Lastra, Rosa (eds.) (Oxford University Press, 2014).

exceptions to the repayment obligation arise as a pure consequence of economic conditions outside the sovereign debtor's control. So how are all these considerations relevant in the context of debt restructurings?

49. A serious limitation to the principle of *pacta sunt servanda* is the set of sovereign obligations in the contemporary global order. If a State and its population must always repay debt under any circumstance, no matter the purpose for which the funds were borrowed,[30] how they were spent[31] or the amount of effort put into reimbursing them,[32] this idea clearly relies on an overly simplistic notion of sovereignty and contract. However, as explained earlier, the economic fate of a given population and its obvious implications in terms of human rights constitute a core element of modern notions of sovereignty.

50. Under certain circumstances, particularly when economic, social and cultural rights at risk, the operation of contract may not be sufficiently compelling to ask the populations of Sovereign States to fully replay their debts in a timely manner. Political institutions shape sovereign borrowing, and lending to sovereign States also shapes their political institutions. That means that, transitively, the capacity of States to respect, protect and fulfil human rights is determined, to some extent, by financial transactions.[33] This is the case when the sovereign debt is contracted or (at later stage) renegotiated.[34] The scope of the *pacta sunt servanda* principle is thus limited by sovereignty and human rights.

51. In light of the *erga omnes* effects of human rights, none of this should appear to be unusual to lenders: they should look at the consequences of their loans and claims in terms of affecting the capacity of the State to meet basic human-rights requirements. Domestic creditors facing individual consumer debtors may be similarly limited by laws that exempt certain essential property from collection efforts. Valid debt contracts and their renegotiation should be undertaken in light of the bounds of legitimate sovereign activity. Since human rights play an important role in defining a core element of modern notions of sovereignty, sovereign debt (and related claims) that may translate into serious damage for the borrower's population potentially violates human rights law.[33] The outcome of sovereign debt and debt restructurings should take the legal needs and rights of the underlying population into consideration.

52. There is a growing set of international standards suggesting that lenders should consider the consequences of their financial decisions in order to not affect the obligation of States to progressively achieve economic, social and cultural rights, using their maximum available resources (International Covenant on Economic, Social and Cultural Rights, article 2.1). The Guiding Principles on foreign debt and human rights, the Guiding Principles on Business and Human

[30] See Leader, Sheldon and Ong, David, eds., *Global Project Finance, Human Rights and, Sustainable Development*, Cambridge University Press, 2011.

[31] See A/HRC/28/59.

[32] See Reinisch, August, and Binder, Christina, "Debts and State of Necessity", in Bohoslavsky and Letnar, op. cit., pp. 115-128.

[33] See Bohoslavsky, J. P. and Letnar, J., eds., *Making Sovereign Financing and Human Rights Work*, Hart Publishing, Oxford, 2014.

[34] This is something that is becoming clearer and clearer when debt repayment poses a peace challenge to the international community. See Goldmann, M., "Sovereign Debt Crises as Threats to the Peace: Restructuring Under Chapter VII of the UN Charter?", *Goettingen Journal of International Law*, 2012, vol. 4.

Rights (see Human Rights Council resolution 17/4) and the UNCTAD Principles on Responsible Sovereign Lending and Borrowing mentioned above, give much consideration to the due diligence duties of lenders, highlighting the fact that a realistic assessment of a sovereign borrower's capacity to service a loan must be made. It is clear that unsustainable debts negatively affect the achievement of development goals and the realization of economic, social and cultural rights.

53. The increasing recognition of debt sustainability as a principle of public international law, which aims to promote economic development, growth and human rights, reveals and synthesizes a gradual change towards a debt paradigm more respectful of the importance of human rights.[35] This paradigm change, which became clear after the end of the Cold War, recognizes the public interest in debt practices aiming to promote such public goods.

54. As stated in a recent UNCTAD report on sovereign debt: "[d]ebt sustainability is not just a financial category. Rather, full debt sustainability is only achieved when debt service does not entail intolerable sacrifices for the well-being of society."[36] On the other hand, as highlighted by the Guiding Principles on Foreign Debt and Human Rights, "[d]ebt sustainability assessments must not be limited to economic considerations (the debtor State's economic growth prospects and ability to service their debt obligations) but must also take into consideration the impact of debt burdens on a country's ability to achieve the Millennium Development Goals and to create the conditions for the realization of all human rights."[37]

55. To think of sovereign debt markets as totally independent from the notion and realization of social and economic human rights is something unacceptable not only from an economic point of view,[38] but also from a legal perspective. Once it is acknowledged that there are links between sovereign debt and the realization of economic, social and cultural rights, there may be a clash of international norms, or even regimes, focusing on different public goods.

56. When there is a relationship of conflict between two valid and applicable norms that lead to incompatible decisions, the effort should be made to interpret them so as to give rise to a single set of compatible obligations. In this regard, it is worthwhile to recall the conclusion of the Study Group of the International Law Commission that, in the case of conflict between one of the hierarchically superior norms (including human rights *erga omnes* obligations) and another norm of international law, the latter should, to the extent possible, be interpreted in a manner consistent with the former.[39] This is why *pacta sunt servanda* needs to be reconciled with human rights law in the context of debt restructurings.

57. Both sovereign borrowers and lenders of every type are asked to protect human rights. More specifically, in its general comment No. 3,[40] the Committee on

[35] Bohoslavsky, J. P. and Goldmann, M., "Sovereign Debt Sustainability as a Principle of Public International Law: An Incremental Approach", UNCTAD Working Paper, March 2015, Geneva. See also Riegner, Michael, "Sustainability as a General Principle in Sovereign Debt Restructuring," 2015.

[36] UNCTAD, "Sovereign Debt Workouts: Going Forward: Roadmap and Guide" (2015), Geneva.

[37] Human Rights Council resolution 20/10.

[38] See Dowell-Jones, M. and Kinley, D., "Minding the Gap: Global Finance and Human Rights" *Ethics & International Affairs*, Issue 25.2.2011.

[39] See A/CN.4/L.702, para. 14 (42).

[40] E/1991/23, annex III, para. 10.

Economic, Social and Cultural Rights developed the concept of minimum essential levels of each economic and social right, which every individual should enjoy. These minimum core obligations suggest, in a universal fashion, some fundamental implications for sovereign debt generally, and more specifically for debt restructurings.

58. These human rights law commitments serve to remind all parties that the general principle of *pacta sunt servanda* applies to all international obligations, including human rights obligations, not just debt contracts. This inherent respect for all agreements often gets lost in the debates that emphasize the principle of *pacta sunt servanda* solely for financial creditors. Since the principle may also work as an argument in favour of human rights in sovereign debt, a comprehensive interpretation of its contents and implications is of paramount importance.

59. Therefore, as States need to be able to comply with *pacta sunt servanda* with regard to both debt and human rights obligations, all relevant rules of international law applicable in relations between the parties should be taken into account when interpreting international norms, as indicated by the Vienna Convention on the Law of Treaties (article 31.3.(c)).

60. These reflections do not ignore the fact that expectations of repayment still dominate, as demonstrated, for example, in the current debate on the debt crisis in Greece. Yet, more and more attention is being paid to how sovereign debt is linked to human rights. This is particularly true in the context of debt crises, where both official and civil society initiatives at the national and international level try to minimize the human suffering associated with these painful experiences. The debate about how sovereignty, human rights and *pacta sunt servanda* interact with each other might offer fruitful insights for the negotiations of a new legal framework being carried out by the Ad Hoc Committee on Sovereign Debt Restructuring Processes established by the General Assembly, complementing the six human rights benchmarks submitted by the Independent Expert on 26 January 2015.[41]

IV. Conclusions

61. **The Independent Expert is of the opinion that a more nuanced view of the *pacta sunt servanda* principle could be essential to the consideration of the links between debt and human rights. In his view, an absolutist version of this principle (i.e. denying the option to discuss possible exceptions to the repayment obligation) should not be considered as part of either positive law or of customary international law, and it deserves further discussion and detailed attention. Debt contracts exist in a broader legal and economic universe, in which the relationship between States, including in the financial sphere, and their populations is marked by international human rights law. Lenders may prefer not to acknowledge it, but they are not unaware of this link, hence their increasing due diligence duties to prevent violations of economic, social and cultural rights.**

62. **The increasing importance attached to sustainability as a principle in the law of sovereign debt is consistent with a modern notion of *pacta sunt servanda***

[41] See "Towards a multilateral legal framework for debt restructuring: Six human rights benchmarks States should consider" (http://www.ohchr.org/Documents/Issues/Development/IEDebt/DebtRestructuring.pdf)

grounded on contemporary understandings of sovereignty, legitimacy and human rights. Sustainable debt portfolios and debt restructuring agreements should include growth and repayment capacity, but should also take into account their impact on the implementation of economic, social and cultural rights of the sovereign debtor's population. An examination of this fundamental claim should, in turn, shed some light on the principles of legitimacy and *pacta sunt servanda* in the debt field.

63. **A comprehensive understanding of the *pacta sunt servanda* principle would not introduce legal uncertainty. Not only because there are well-established rules for interpreting conflicting international norms in the Vienna Convention on the Law of Treaties, including a helpful guide elaborated by the International Law Commission,[42] but also, above all, because denying or not facing the existence of a normative conflict is, in fact, what provokes deep uncertainty. If financial obligations and human rights are considered to be mutually exclusive obligations, without the possibility of dialogue between them, one prevailing over the other depending on political and economic factors, without attaching any importance to what a systematically integrated international law has to say in this regard, there will be continuing uncertainty.**

64. **This is also a crucial reason, in the view of the Independent Expert, for establishing a multilateral legal framework on sovereign debt restructuring processes that would authoritatively identify and interpret the rules. This framework would also contribute to reducing legal uncertainties in this field.**

65. **In the present report, the Independent Expert aims to contribute to the ongoing discussions by providing nuanced views on how the principles of legitimacy, sustainability (both recently identified by the Ad Hoc Committee on Sovereign Debt Restructuring Processes) and human rights law can influence the contemporary understanding of the principle of *pacta sunt servanda* in the context of debt crises.**

[42] See A/CN.4/L.702.

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Science and technology for development

Report of the Secretary-General

Summary

The present report, prepared by the United Nations Conference on Trade and Development in response to General Assembly resolution 68/220, provides information on the implementation of the resolution, particularly through the work of the Commission on Science and Technology for Development, the United Nations Conference on Trade and Development and other relevant United Nations organizations. The report highlights findings from policy discussions and research on science, technology and innovation as an enabler of sustainable development; lessons learned and recommendations from the work done to assist developing countries in their efforts to integrate science, technology and innovation policies into national development strategies and strengthen their national innovation systems; and the review of progress made in implementing the outcomes of the World Summit on the Information Society.

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I. Introduction

1. The present report responds to General Assembly resolution 68/220, in which the Assembly requested the Secretary-General to submit at its seventieth session a report on the implementation of the resolution and recommendations for future follow-up, including lessons learned in integrating science, technology and innovation policies into national development strategies.

2. In its resolution 68/220, adopted 20 December 2013, the General Assembly recognized the vital role that science, technology and innovation, including information and communications technology (ICT), can play in facilitating efforts to address global challenges and achieve internationally agreed development goals. The Assembly expressed concern that the promise of science, technology and innovation remains unfulfilled for the majority of the poor; many developing countries lack affordable access to ICT and face serious challenges in building their national science, technology and innovation bases.

3. The General Assembly requested the United Nations Conference on Trade and Development (UNCTAD) to continue its science, technology and innovation policy reviews. It asked the Commission on Science and Technology for Development to address the special needs of developing countries in areas such as agriculture, rural development, environmental management and ICT, and to provide a forum to assist in the follow-up to the outcomes of the World Summit on the Information Society.

4. The General Assembly reaffirmed its commitment to leverage science, technology and innovation for development, and called on Member States, United Nations agencies and the international community, as appropriate, to give science, technology and innovation due consideration in elaborating the post-2015 development agenda; carry out empirical research on innovation and development, including national innovation systems; and assist developing countries in integrating science, technology and innovation into development strategies and enhance their science, technology and innovation capacities.

5. The General Assembly reiterated its call for continued collaboration between United Nations entities and other international organizations, civil society and the private sector in implementing the outcomes of the World Summit with a view to putting the potential of information and communications technologies at the service of development through policy research on the digital divide and on new challenges of the information society, as well as technical assistance activities, involving multi-stakeholder partnerships.

6. Governments were urged to mainstream a gender perspective in legislation, policies and programmes, and to strengthen investment in environmentally sound technologies, with support from the international community.

7. Scientific organizations and research institutions dealing with science, technology and innovation were encouraged to develop strategic alliances with governments, the public and private sectors, universities, laboratories and civil society to further expand their fellowship and training programmes.

8. The international community was encouraged to continue to facilitate an adequate diffusion of scientific and technical knowledge and transfer of, access to and acquisition of technology. The General Assembly also called upon the development community to initiate, implement and support measures to improve the

level of participation of scientists and engineers from developing countries in international collaborative research and science, technology and innovation projects.

9. In response to the resolution, the present report will highlight findings from policy discussions and research on science, technology and innovation as an enabler of sustainable development; lessons learned and recommendations from the work done to assist developing countries in their efforts to integrate science, technology and innovation policies into national development strategies and strengthen their science, technology and innovation capacities; and the review of progress made in implementing outcomes of the World Summit, including research and policy discussions on the digital divide. It concludes by providing updates on some of the initiatives to strengthen science-policy advice; integrate science, technology and innovation into financing for development; and enhance global science, technology and innovation support mechanisms.

II. Harnessing science, technology and innovation for sustainable development

10. The Commission on Science and Technology for Development devoted its 2014 and 2015 sessions to examining the role of science, technology and innovation in the transition from the Millennium Development Goals to the sustainable development goals.[1] The aim was to assess how science, technology and innovation contributed to achieving the Millennium Development Goals and, learning from that experience, provide policy lessons for the role of science, technology and innovation within the post-2015 development agenda.

A. Transition from Millennium Development Goals to sustainable development goals

11. Drawing on national and international experiences, the Commission analysed the role of science, technology and innovation in the implementation of the Millennium Development Goals. The following issues were examined in particular: science, technology and innovation and the technological divide; ICT and the digital divide; science, technology and innovation and social objectives, such as sustainable urbanization, agriculture and energy; science, technology and innovation for capacity-building, particularly through education and research; and the impact of new technologies on development.[2]

12. The Commission's work demonstrated that science, technology and innovation had a critical role to play in the progress towards the Millennium Development Goals. The basic needs of people, such as food, water, sanitation, education, health,

[1] The four priority themes from the past two sessions were science, technology and innovation for the post-2015 development agenda, ICT for inclusive social and economic development, strategic foresight for the post-2015 development agenda and digital development. The 2015 session also included a ministerial round table on the role of science, technology and innovation in managing the transition from the Millennium Development Goals to the sustainable development goals.

[2] See E/CN.16/2014/2 for a detailed mapping of Commission priority themes and their linkages with the Millennium Development Goals.

housing and energy, all have technological elements and require complex combinations of household, community, public and private action.

13. While there have been success stories in capitalizing on the potential of science, technology and innovation for the implementation of the Millennium Development Goals, that potential was not fully utilized in several sectors and in many countries. The Commission underlined that the key lesson from that varied experience is that science, technology and innovation policies need to be thoroughly integrated into national development plans and strategies.

14. The lack of national capacity for science, technology and innovation hindered the progress towards some of the Millennium Development Goals, especially in the least developed countries. That included a lack of capacity to formulate coherent science, technology and innovation policies and integrate them into development plans; a lack of human resources in science, technology, engineering and mathematics; and a lack of absorptive capacity of local firms and their ability to innovate.

15. The Commission found that policies related to science, technology and innovation are often disjointed, and that has resulted in policy ineffectiveness. Policies formulated in the ministries and agencies dealing with issues related to science, technology and innovation are often disconnected from the policies formulated in the ministries and agencies dealing with health and environment, for example. Similarly, policies related to entrepreneurship are often not in line with those dealing with innovation.

16. The work of the Commission highlights that the impact of science, technology and innovation on development must be understood within the context of a socio-technical system, one in which humans and technologies work together to produce outcomes to effectively respond to societal challenges. In that context, the Commission noted the importance of multi-stakeholder and community-based initiatives that utilize local knowledge, stimulate grass-roots entrepreneurship and harness existing technologies to solve local problems.[3]

17. Those findings underline the importance of science, technology and innovation for development and provide valuable lessons for work beyond 2015. First, the role of science, technology and innovation as an enabler of the post-2015 development agenda needs to be strongly articulated. The development community needs to not only recognize the concept of science, technology and innovation as a cross-cutting theme but also define how it will contribute to achieving the sustainable development goals. Second, national science, technology and innovation capacity-building needs to be a priority. That includes strengthening national innovation systems and the institutions that deal with science, technology and innovation and their ability to integrate science, technology and innovation policies into national development plans. That requires, inter alia, improving policy coherence and coordination related to science, technology and innovation; strengthening local human resources in science, technology, engineering and mathematics; promoting

[3] For example, in Costa Rica, the national water laboratory set up a contest among villages to design and operate community water systems. By leveraging the designs contributed by villages, as well as lending technical expertise, the laboratory was able to put in place water systems that were suitable for specific local contexts.

the capacity of communities and local business to innovate; and harnessing effective international collaboration in science, technology and innovation fields.

B. Science, technology and innovation as an enabler of the post-2015 development agenda

18. Looking ahead to the role of science, technology and innovation in the post-2015 development agenda, the Commission focused its attention on the use of strategic foresight to anticipate trends in science, technology and innovation and to guide policies that strengthen public research institutions in order to channel research towards relevant areas for sustainable development goals, harness ICT as a tool that enables inclusive development and apply a gender lens to science, technology and innovation policies.

Strategic foresight for the post-2015 development agenda

19. The post-2015 development agenda will include a set of sustainable development goals that build on the Millennium Development Goals and define development priorities through 2030. The agenda promises to be ambitious, encompassing economic transformation, inclusivity and environmental protection. Against that background, the Commission examined the role of strategic foresight in implementing the post-2015 development agenda.[4] It conducted a strategic foresight exercise on key science, technology and innovation trends for sustainable development, including those related to agriculture, energy and the environment (see E/CN.16/2015/3). The Commission concluded that strategic foresight is an important policy tool that can help gather intelligence on future trends and challenges in science, technology and innovation and guide development strategies and plans. For example, strategic foresight can help policymakers identify potential long-term skills gaps in human resources and design appropriate education policies and capacity-building strategies. Furthermore, by involving structured debate among members of the government, academia, industry and civil society, strategic foresight can lead to a shared understanding of long-term issues among development stakeholders.

20. Foresight exercises in Latin America[5] showed that a key challenge in strengthening the value of strategic foresight for the post-2015 development agenda will be to link foresight exercises with decision-making processes. That highlights the need for new institutions in many countries dedicated to foresight within government and non-governmental bodies.

21. Moreover, foresight experiences in Africa[6] highlighted the importance of context-specific foresight methods, continuous resource support for foresight

[4] Strategic foresight is the study and evaluation of future trends and "megatrends" in global development, together with their potential social, environmental and economic impacts. See E/CN.16/2015/3.

[5] The Commission discussed the work of the Inter-American Dialogue, which has registered more than 800 long-term global and sector-specific foresight studies with a focus on Latin America.

[6] For example, the diagnostic and foresight process in South Africa enabled the open, shared confrontation of harsh national realities through an independent, endogenous planning commission. See http://unctad.org/meetings/en/Presentation/ecn162015p07_KaruriSebina_en.pdf.

exercises, suitable communication campaigns to publicize foresight findings, transparency in foresight processes to promote legitimacy and participatory processes to encourage community ownership of foresight exercises.

22. The Commission recommended that governments conduct strategic foresight on global and regional challenges at regular intervals and share the results. In that process, governments are encouraged to make use of existing regional mechanisms and collaborate with relevant stakeholders. The European Foresight Platform and the International Foresight Academy are successful examples of such collaborations.

Role of public research institutions and indigenous innovations

23. Public research institutions have a critical role to play in the post-2015 development agenda, particularly in channelling research efforts to areas relevant for the sustainable development goals. In that regard, the Commission encouraged governments to involve public research institutions more directly in designing and implementing development agendas.[7] That would help embed research related to the post-2015 development agenda into the strategic plans and research of those institutions.

24. Many of the challenges countries will face while implementing the post-2015 development agenda will be specific to local communities. The Commission called for collaboration between research institutions and marginalized communities to bring together academic and local knowledge. It also recommended collaborative projects that promote local needs-based innovation[8] and the scaling up of grass-roots solutions.

Harnessing information and communications technology for inclusive and sustainable development

25. ICT is intricately linked with the three emerging themes of the post-2015 agenda: transformation, inclusivity and sustainability (see E/CN.16/2015/2).

26. The Commission continued to identify emerging technologies that can enhance digital connectivity and promote sustainable rural development, in particular television white space technology and next-generation satellites (see E/CN.16/2015/2). In addition to increasing rural Internet connectivity, those emerging technologies could strengthen environmental monitoring and natural disaster response capabilities. The Commission recommended measures to facilitate the wider application of those technologies, including the development of regulations and licensing mechanisms.

27. The Commission further examined five ICT trends that are transforming the information revolution and considered their implications for policy and regulation: datafication, big data, cloud computing, the Internet of things and smart systems (see E/CN.16/2014/3). The Commission concluded that taking advantage of the opportunities and mitigating the risks of those trends would require developing the

[7] The Institute for Water Technology in Mexico was cited as a successful case study in that context.

[8] The Council for Scientific Research at the University of the Republic in Uruguay, for example, has pioneered the design of programmes that link university researchers effectively with local communities to solve problems.

necessary hard and soft infrastructure, such as ICT infrastructure, human resources and regulatory frameworks.

28. For example, UNCTAD research found that cloud computing and services offer governments, businesses and other organizations opportunities such as reducing the budget for information technology hardware and enhancing data storage reliability and elasticity.[9] However, infrastructure deficiencies, such as low broadband penetration and unreliable power, seriously hamper the uptake of cloud computing in many developing countries. Similar challenges limit the development of e-commerce, reducing its potential to create jobs and enhance firms' participation in global value chains.[10] Further, the cloud poses legal and regulatory challenges, especially concerning data protection and privacy. The Commission called for further systematic research on the new ICT trends and their impact on development to facilitate a better understanding of the opportunities and risks they pose, particularly in the context of the post-2015 development agenda.

29. The Commission continued to monitor as well as highlight the changing nature of digital divide, from one based on access to one based on capabilities. Although growing portions of the populations in developing countries are gaining access to digital technologies, few have the necessary skills to make the transition from ICT users to ICT producers. Hence, the Commission stressed the need for a skills-based approach to ICT capacity-building, so that digital access leads to stronger development results.

30. Finally, the Commission pointed to the need to broaden the ICT-for-development (ICT4D) discourse, which has often translated into a fragmented and isolated approach to policymaking. The Commission recommended a holistic and systemic approach to digital policy formulation, taking into consideration all relevant components[11] of the digital ecosystem. The Commission further encouraged governments to conduct assessments of their national digital ecosystems with a view to identifying gaps and weaknesses. It also drew attention to constraints affecting the deployment of ICT, including limited infrastructure, power and financial and human resources.

Applying a gender lens to science, technology and innovation

31. Science, technology and innovation policies should reflect the different roles women and men play in family and community. To that end, the work of the Commission continued to underscore the importance of integrating a gender perspective into science, technology and innovation.

32. In 2011, the secretariat of the Commission published a report entitled "Applying a gender lens to science, technology and innovation" (available from http://unctad.org/en/Docs/dtlstict2011d5_en.pdf) and identified three entry points:

(a) Science for women: developing science and technology that support women's development and livelihood activities;

[9] *Information Economy Report 2013: The Cloud Economy and Developing Countries* (United Nations publication, Sales No. E.13.II.D.6).

[10] *Information Economy Report 2015: Unlocking the Potential of E-Commerce for Developing Countries* (United Nations publication, Sales No. E.15.II.D.1).

[11] Including, for example, technological infrastructure, data infrastructure, financial infrastructure, institutional infrastructure and human infrastructure.

(b) Women in science: promoting gender equality in education, careers and leadership in science, technology, engineering and mathematics;

(c) Women in innovation: encouraging and supporting the role of women in innovation systems at national and grass-roots levels.

33. As a follow-up to the 2011 publication, the secretariat of the Commission produced a report entitled "Technology in action: good practices in science, technology and innovation policies for women in South Asia" (available from http://unctad.org/en/PublicationsLibrary/dtlstict2013d3_en.pdf). The report highlighted good practices in leveraging science, technology and innovation to help women be more productive and efficient in their daily work, diversify their economic activities and improve their ability to care for their families; in creating opportunities for women in fields related to science, technology, engineering and mathematics; and in strengthening women's capacities as entrepreneurs and supporting their business activities. The cases provide important lessons for formulating more effective science, technology and innovation policies for women.

34. First, when applying a gender lens to science, technology and innovation policies and initiatives, it is essential to link those policies to women's livelihood activities and responsibilities. For example, women's roles as livelihood managers and farmers in many communities means agricultural technologies such as drip irrigation can greatly improve their lives and the well-being of their families and communities. The same is true for science, technology and innovation initiatives that improve water supply and sanitation or introduce electricity in villages; in addition to improving the health of families and communities, such initiatives can reduce the time women in many communities devote each day to collecting water and fetching wood or kerosene.

35. Second, to reap the potential benefits of technological developments, training programmes designed according to the needs of the targeted women are necessary to familiarize them with the technology and demonstrate its inherent benefits. In that context, it is important to pay attention to cultural sensitivities when designing capacity-building activities; for example, the activities could be led by local women.

36. Third, science, technology and innovation policies and initiatives for women should incorporate a community-driven approach and give women an active role in the implementation process. For instance, the Commission found that engaging community leaders in the different stages of a programme helps ensure cultural sensitivity, especially regarding gender issues, and improves the likelihood of success. Similarly, involving the targeted women in decision-making processes or giving them a role in implementation will facilitate their interest and participation.

37. Overall, science, technology and innovation policies for women need to be context specific. That means considering the specific cultural, economic and social factors that contribute to the gender divide in their particular communities. It also means addressing the needs and challenges of the specific roles and responsibilities women play in their particular societies. The Commission recommends that governments and other stakeholders give due consideration to context when scaling up successful policies and initiatives.

Moving forward: articulating the role of science, technology and innovation beyond 2015

38. Based on the findings of its discussion on priority themes at its seventeenth and eighteenth sessions, the Commission recommended four resolutions for adoption by the Economic and Social Council (see E/2014/31-E/CN.16/2014/4 and E/2015/31-E/CN.16/2015/4). In its resolution 2014/28, the Council called upon the Commission to help articulate the important role of ICT and science, technology, innovation and engineering in the post-2015 development agenda by acting as a forum for horizon scanning and strategic planning; providing foresight about critical trends in science, technology and innovation; and drawing attention to emerging and disruptive technologies that can potentially affect the achievement of that agenda. It also called on the Commission to continue its role as a torch-bearer for science, technology and innovation and to provide high-level advice to the Council and the General Assembly on relevant science, technology, engineering and innovation issues.

III. Strengthening science, technology and innovation capacity

39. Lessons from the experience of the Millennium Development Goals underscore the importance of strengthening national science, technology and innovation capacities. To that end, UNCTAD has continued to conduct research, carry out technical assistance and build consensus, including through, inter alia, its science, technology and innovation policy reviews, presented and discussed at the annual sessions of the Commission. In addition, its work has aimed at improving the integration of science, technology and innovation policies within national development strategies; making innovation policies more inclusive; enhancing innovation systems; facilitating technology transfer; promoting technology parks and cooperation in science, technology and innovation; and strengthening ICT capacity.

Integrating science, technology and innovation policies within national development strategies

40. UNCTAD completed science, technology and innovation policy reviews of Oman and Thailand in 2014 and 2015 and presented the results at the seventeenth and eighteenth sessions of the Commission, respectively. Science, technology and innovation policy reviews support national governments in their efforts to integrate science, technology and innovation policies into their national development strategies.

41. One main finding of the reviews was that the scope and quality of interactions between business, academia and government are a major factor in the performance of national innovation systems. Circumstances that discourage interaction include large firms that are reluctant to collaborate with national counterparts, academic research that is not relevant for national industry, overtly protective intellectual property guidelines in academia and low spending on research and development.

42. Another observation was that an absence of a national innovation strategy allows each ministry and related agencies to elaborate science, technology and innovation policies without much cross-consultation and coordination. That can result in poor synergy and implementation. Governments need to establish a clear

division of the roles and responsibilities and hierarchies among science, technology and innovation institutions. For instance, departments responsible for policy setting, departments responsible for financing and departments responsible for implementation should be independent of each other.

43. The reviews also stressed the development of strong national innovation capabilities to ensure sustainable competitiveness and continued increases in productivity and per capita income. Qualitative and quantitative assessments of outcomes that go beyond the traditional metrics of inputs, such as funding for research and development, are necessary for developing evidence-based innovation policies.

44. The review of Oman highlighted several framework conditions[12] related to governance, infrastructure development, business environment, human resources and research capabilities that are particularly relevant for resource-rich economies. First, economic growth based on importing a large percentage of low-cost labour can be a strong disincentive to innovation and technology-based growth. Second, in an economy overly dependent upon natural resource exports, the global competitiveness of national sectors will be at risk as imports become more affordable. Third, the absence of a strong antitrust authority and competition law, and an underdeveloped technical capacity to manage intellectual property, inhibit the development of a dynamic small and medium enterprise sector. Finally, in a society where wealth is accumulated through the extraction of natural resources, citizens may be less inclined to take risks. The result is a strong preference for investing in tangible assets such as real estate, rather than in industry or other high innovation sectors.

45. The review for Thailand provides lessons for middle income economies. First, governments must improve the quality of science, technology and innovation education and training. That includes improving the education budget and holding educational institutions accountable. Budgets should provide sufficient resources for training teachers in science, technology and innovation skills; developing science, technology and innovation training materials; and upgrading equipment. Second, tax incentives for research and development, even when generous, do not attract sufficient private resources into innovation activities. That is in line with the observed contradiction between an increase in technological inputs in developing countries and a widening gap in technological outputs. Such trends show the need for coherence in setting science, technology and innovation policy targets, and for coordination, continuity and effective implementation of those policies in order for research and development expenditures to lead to stronger innovation (see TD/B/C.II/MEM.4/5).

46. A challenge common to many countries is the integration of science, technology and innovation policies into sectoral policies and development plans. One reason is a lack of science, technology and innovation policy awareness among sectoral policymakers. Additional efforts are therefore required to train sectoral policymakers on the role of science, technology and innovation and policy options and instruments, and ways to integrate science, technology and innovation into sectoral policies.

[12] Framework conditions constitute the overall environment in which a national innovation system functions.

47. Further work could be carried out to explore how governments could improve the monitoring and evaluation of science, technology and innovation policies and programmes and strengthen the oversight and accountability of science, technology and innovation institutions; for example, the type of incentives that should be provided to ensure greater accountability and enhanced science, technology and innovation policy learning.

48. Drawing upon the findings of the science, technology and innovation policy reviews, the Commission highlighted the following policy recommendations: developing institutional support for entrepreneurs and risk taking; stimulating research and development, in particular cross-disciplinary research initiatives; strengthening the protection and enforcement of intellectual property rights; bolstering education and vocational training programmes in the fields of science, technology, engineering and mathematics; and increasing the participation of traditionally underrepresented groups in science and technology. Finally, the Commission encouraged governments not to limit science, technology and innovation work to urban centres, as that could foster a technology divide between residents of urban areas and rural areas.

Adopting inclusive innovation policies

49. Given the widening inequalities across the world, innovation policies that encourage technological developments that meet the needs of low-income communities and excluded groups are of paramount importance. That was stressed at the sixth session of the Investment, Enterprise and Development Commission of UNCTAD.

50. The Commission highlighted important considerations for designing and implementing inclusive innovation policies. First, innovation policies need to facilitate collaboration between firms and the other players in the innovation system to encourage the development of products that meet the needs of the poor. In that context, governments can facilitate linkages and partnerships between small grass-roots innovators and larger science, technology and innovation stakeholders to help scale up grass-roots innovations. Second, policies should support the microenterprises that provide the demand-side services and the main intermediaries responsible for the sales and support of small-scale innovations.[13] Third, governments can encourage public-funded research and research and development organizations to do more to meet the needs of the poor. Examples include competitive research grants, prizes and public awards for research that produce relevant innovations, and competitive public sector procurement for the production of specific goods and services for the poor (see TD/B/C.II/25). Finally, institutions and the laws and regulations they create play an important role in determining the extent to which the poor can participate in and benefit from the innovation processes. For instance, laws and regulations governing intellectual property rights may be an obstacle to inclusive innovation.

[13] Empirical work on successful innovations for the bottom-of-the-pyramid market in the mobile sector in Kenya highlighted the importance of regulations and policy initiatives that facilitated the participation of more market players and ensured stronger competition. See TD/B/C.II/25.

Developing international technology and innovation networks

51. The increasing use of open innovation models, which entail the collaboration of firms with external partners to expand and strengthen their competitive advantages through innovation, is not limited to collaboration at the local level. Transnational corporations increasingly locate their activities at different points along the global value chains and rely on innovation created throughout the chain.[14]

52. Global value chains are increasingly present in developing countries and interact with their national innovation systems. For developing countries, the benefits of global value chains will depend on the linkages local firms develop with other agents of the chain, and on their ability to learn and improve through those linkages.

53. Science, technology and innovation policies can contribute to enhancing and strengthening the participation of local firms in global value chains. Policies that could foster the integration or upgrading of local firms or farmers in developing countries include promoting the development of strong sectoral innovation systems in a particular industry; establishing meso-institutions to support firms and farmers (e.g., metrology and standards organizations, industry associations); establishing incubators or clusters; and using public-private partnerships, such as research consortiums, to promote collaboration and knowledge flows.

54. For example, in South Africa a national meso-institution for automotive standards played a major role in meeting international standards, which was key to helping local firms integrate into automotive global value chains and adjust to global integration following the liberalization of the economy in the 1990s. In Kenya, it was possible to integrate smallholder farmers into global value chains by providing support to help them meet international sanitary and phytosanitary standards and traceability requirements, among other challenges.

55. Linkages between local and international innovation agents are not limited to firms but are also present between other innovation agents. For instance, international networks in research involve academics and institutional collaboration agreements between universities and research centres.

56. The increasingly international nature of innovation implies that science, technology and innovation policies need to address both national and local contexts and take into account the need to participate on favourable terms in international technology and innovation networks, such as global value chains. In that context, it is important to recognize the existence of firms with different capacity levels when designing science, technology and innovation policies. Science, technology and innovation policies should strengthen both firms that already have the capacities to participate in international networks and those that participate only in local markets.

Facilitating technology transfer

57. Technology transfer through collaborations and partnerships was a specific theme of UNCTAD Commissions, Multi-year Expert Meetings and Current Studies

[14] The second and third sessions of the Multi-year Expert Meeting on Investment, Innovation and Entrepreneurship for Productive Capacity-Building and Sustainable Development examined global value chains and the internationalization of innovation systems. See TD/B/C.II/MEM.4/5 and TD/B/C.II/MEM.4/6.

publications.[15] Research showed that the link between technology transfer and innovation should not be taken for granted; success in the transfer of technology among countries must be distinguished from success in the application of these technologies to create local innovation. Analysis of the various approaches that firms and industries in different countries have taken highlighted several important lessons.[16]

58. First, local absorptive capacity, including human capital, domestic knowledge accumulation and the basic infrastructure required for research and development, must be strengthened for technology transfer to lead to technological upgrading and local innovation. For instance, empirical work on innovation in Ghana and Kenya showed that firms that had developed internal research and development were capable of identifying and acquiring technology externally and diffusing it internally.

59. Second, the capacity to innovate is not the result of acquiring new technologies alone: it also requires new management, organizational and entrepreneurial skills. Policymakers in developing countries should therefore improve their ability to help actors in the innovation system identify opportunities for innovation in the economy. That could be done by providing information on the type of technologies available, or that will be available, and linking it to business opportunities in the economy.

60. Third, other policy dimensions play a key role in building technological capabilities and accelerating the process of catch-up. They include industrial policies, trade, foreign direct investment, education and training, small and medium enterprises, entrepreneurship and competition policies, and, in particular, intellectual property rights.[17] As the cost of international patent protection is high, further work could be carried out to understand how to move from sole ownership of intellectual property to codevelopment involving joint filing and commercialization.

Promoting science, technology and innovation parks

61. The seventh session of the Investment, Enterprise and Development Commission looked at the role of science, technology and innovation parks in promoting collaboration among the actors in innovation systems and enhancing the international competitiveness of local firms.

62. The Commission highlighted the following key issues (see TD/B/C.II/30). First, government support for different public policy areas, including education, research, industry, small and medium enterprises, trade and taxation, is needed for science, technology and innovation parks to be successful. Second, the commercial aim of the park's financial viability may create tension with the policy goal of stimulating effective collaboration and innovation. Third, the sector profile of the park should be

[15] Including the sixth session of the Investment, Enterprise and Development Commission; the second session of the Multi-year Expert Meeting on Investment, Innovation and Entrepreneurship for Productive Capacity-Building and Sustainable Development; and two Current Studies reports.

[16] See UNCTAD, "Studies in technology transfer: selected cases from Argentina, China, South Africa and Taiwan Province of China". Available from http://unctad.org/en/PublicationsLibrary/dtlstict2013d7_en.pdf.

[17] See UNCTAD, "Transfer of technology and knowledge-sharing for development: science, technology and innovation issues for developing countries". Available from http://unctad.org/en/PublicationsLibrary/dtlstict2013d8_en.pdf.

aligned with the national development and innovation strategies.[18] Finally, the knowledge and technology transfer that can occur may be founded on legal instruments such as intellectual property and non-disclosure agreements; therefore, parks need to be able to provide tenants with intellectual property advice and support.

Promoting international cooperation in science, technology and innovation

63. International cooperation and partnerships between different stakeholders are crucial for strengthening science, technology and innovation capacity, especially in the context of the post-2015 development agenda. The Commission on Science and Technology for Development pointed out that good global governance of research was necessary to overcome the North-South divide on research and science. Member States reported some key benefits and successful initiatives of international cooperation:

(a) Global partnerships have helped scale up innovative science, technology and engineering solutions. Examples include the United States Global Development Lab and the Krabi Initiative of the Committee on Science and Technology of the Association of Southeast Asian Nations;

(b) Global and bilateral science, technology and innovation collaborations have strengthened research and education, including vocational training, in developing countries. Examples include IST-Africa, the South East Asia Research Network, the German-Thai Dual Excellence Education Programme and the Higher Engineering Education Alliance Program between the United States of America and Viet Nam;

(c) International science, technology and innovation cooperation has also supported women's participation in science, technology and innovation in developing countries. For instance, the programme TechWomen, an initiative of the Department of State of the United States, empowers, connects and supports the next generation of women leaders in science, technology, engineering and mathematics in Africa and the Middle East;

(d) Finally, global partnerships have helped create science, technology and innovation parks in developing countries. For example, the development of the Sheda Science and Technology Complex in Nigeria benefited from support from international organizations and public and private sectors in China, France, Germany, Poland and the United States.

Strengthening information and communications technology capacity through technical assistance

64. UNCTAD is actively involved in helping developing countries and economies in transition strengthen their ICT capacity through ICT technical assistance. To help countries build their capacity to measure the information economy, UNCTAD has offered regional training courses and provided tailored, demand-driven assistance to institutions involved in the collection and dissemination of official statistics on the information economy (e.g., national statistical offices).[19] To strengthen the legal and

[18] Indeed, the experience of the European Union suggests that science, technology and innovation parks should support the specific business and innovation strategies of the geographic areas in which they are located.

[19] The programme began in 2007 and 99 countries across different geographic regions have

regulatory framework for e-commerce. UNCTAD has helped policymakers and lawmakers at national and regional levels improve their understanding of the underlying issues of ICT.[20] Assistance includes training courses, the review of draft legislation and regional assessments of the status of cyberlaws.

65. To assist government officials in devising ICT strategies that are consistent with their development goals, UNCTAD published a framework for ICT policy reviews.[21] Likewise, to assess the readiness of countries for e-commerce, the *Information Economy Report 2015: Unlocking the Potential of E-Commerce for Developing Countries*[10] presented the new UNCTAD Business-to-Consumer (B2C) E-commerce Index. The index allows countries to compare their readiness with others and indicates their relative strengths and weaknesses in different aspects of the e-commerce process, such as the quality of Internet structure and the availability of payment and delivery solutions. Furthermore, the report mapped the availability of national legislation in four key areas of cyberlegislation: e-transactions, consumer protection online, data protection and privacy, and cybercrime.

66. The work of UNCTAD in integrating ICT policies into national development strategies highlights the following lessons. First, for ICT to fully contribute to economic and social development, governments must first define the development objectives and then consider how ICT may serve as an enabler.[22] Second, inter-ministerial collaboration is important in order to design relevant and effective ICT-for-development policies. For example, the process of designing e-commerce strategies should involve ministries responsible for justice, finance, science and technology, ICT, trade, rural development, employment, and post and transportation. Governments should also consult relevant stakeholders from the private sector and civil society. Third, monitoring and follow-up mechanisms should be put into place; that may in turn require special efforts to collect data and statistics.

IV. Implementation of World Summit on the Information Society outcomes

67. In accordance with the mandate of the Economic and Social Council and the General Assembly, the Commission on Science and Technology for Development serves as the focal point in the system-wide follow-up to the outcomes of the World Summit on the Information Society. During 2014 and 2015, the Commission's work covered three pillars: (a) reporting on the follow-up to the World Summit outcomes, including a 10-year review of progress made in the implementation of the outcomes of the World Summit; (b) conducting research, particularly on the review of

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benefitted from the initiative.

[20] The UNCTAD E-commerce and Law Reform Programme was created in 2002. Since 2007, programme activities have been implemented in 21 countries in Africa, 10 in Asia and 22 in Latin America and the Caribbean; overall, 20 are least developed countries.

[21] See UNCTAD, "A framework for information and communications technology policy reviews: helping countries leverage ICT for development". Available from http://unctad.org/en/PublicationsLibrary/dtlstict2013d6_en.pdf.

[22] A useful illustration of this point is the mapping of the linkages between the action lines agreed at the World Summit on the Information Society and the sustainable development goals proposed by the Open Working Group on Sustainable Development Goals. The exercise showed that at least one action line can be seen as relevant to the achievement of each of the 17 sustainable development goals.

international public policy issues pertaining to the Internet; and (c) promoting dialogue and building consensus on furthering the implementation of the World Summit outcomes.

68. In 2014 and 2015, the Secretary-General issued annual reports on the progress made in the implementation of and follow-up to the outcomes of the World Summit on the Information Society at the regional and international levels (see A/69/65-E/2014/12 and A/70/63-E/2015/10). The reports contain information provided by entities in the United Nations system, as well as other stakeholders, on their efforts during the previous year to implement the World Summit outcomes, with a view to sharing effective practices and lessons learned.[23]

69. In response to the concerns expressed about the digital divide by the General Assembly in its resolution 68/220, the report of the Secretary-General on activities during 2014 (A/70/63-E/2015/10) emphasizes the importance of investment in broadband networks and services, content and capacity-building for users to be able to make full use of the opportunities provided by ICT; the need to ensure trust in ICT and maintain cybersecurity; the need for legal and regulatory arrangements to adapt to rapidly changing technology and markets, including the growing significance of e-commerce, cloud computing and the Internet of things; the need to resolve differences concerning Internet governance, enabling governments and other stakeholders to carry out their roles and responsibilities in accordance with the World Summit outcomes; and the importance of ensuring that ICT contributes positively towards meeting environmental challenges.

70. At the seventeenth and eighteenth sessions, in the context of the substantial discussion on the 10-year review of the progress made in the implementation of the World Summit outcomes, the Commission discussed the developments and trends related to the World Summit, as requested in paragraphs 8 and 18 of resolution 68/220. They emphasized that, while considerable progress has been made in increasing access to ICT and reducing the digital divide in basic services, there is evidence of continued and, in some cases, growing digital divides in many areas which are of great importance to maximizing the value of ICT for development, including connectivity and affordable access to broadband services. Concern was expressed about the divide between developed and developing countries, the needs of least developed countries, the importance of continuing to address the gender divide and the need to ensure full inclusiveness in the information society, including for economically and socially marginalized groups.

71. In its resolution 2013/9, the Economic and Social Council requested the Commission to collect inputs from all facilitators and stakeholders concerning progress made in the implementation of the World Summit outcomes. The Council also requested the Commission to submit, after its eighteenth session, the results of its 10-year review of progress made in the implementation of the outcomes of the World Summit, through the Council, to the General Assembly as it makes an overall review of the implementation of the outcomes of the World Summit in 2015. To that end, the Commission secretariat set up a multi-stakeholder open consultation process from June to October 2014 to gather insight from all stakeholders, in particular their views and priorities on progress made at the regional and international levels. In addition, seven face-to-face consultations focused on particular regions were organized. The

[23] See A/70/63-E/2015/10, footnote 1, for the list of entities that contributed to that report.

findings were compiled in the form of a report entitled "Implementing WSIS outcomes: a ten-year review" (available from http://unctad.org/en/PublicationsLibrary/dtlstict2015d3_en.pdf). The report served as the basis for the substantive discussion of the Commission on the 10-year review of the progress made in the implementation of the World Summit outcomes.

72. The Commission noted that the World Summit outcome documents continue to provide a solid foundation for shaping the information society, putting the vision of a people-centred, inclusive and development-oriented information society at the heart of the review. They emphasized the importance of mainstreaming ICT into the sustainable development goals and the post-2015 development agenda and called for synergies to be identified between the 10-year review of the World Summit and those processes.

73. In its resolution 67/195 on information and communications technologies for development, the General Assembly invited the Chair of the Commission to establish a working group on enhanced cooperation to examine the mandate of the World Summit on the Information Society regarding enhanced cooperation as contained in the Tunis Agenda. The working group met five times between May 2013 and May 2014. The Chair of the Working Group gave an account of the Working Group's efforts at the seventeenth session of the Commission. At the recommendation of the Economic and Social Council, the work concerned with the review of international public policy issues pertaining to the Internet was continued by the secretariat of the Commission. The Commission reported on the findings of that work at the eighteenth session of the Commission.

74. As the outcome of its 10-year review of the World Summit, the Commission recommended that the Economic and Social Council forward the report of the Commission on its eighteenth session, including a summary of the substantive discussion on the 10-year review of implementation of the World Summit outcomes alongside a link to the interventions made in that regard, to the preparatory process of the high-level meeting of the General Assembly, to be held on 15 and 16 December 2015, that will conclude the review process on the World Summit. The Commission also recommended that the Council submit the report prepared by the its secretariat entitled "Implementing WSIS outcomes: a ten-year review" to the preparatory process of the high-level meeting of the Assembly for their deliberation.

V. Strengthening science-policy advice; integrating science, technology and innovation into financing for development; and enhancing support mechanisms for science, technology and innovation

Strengthening science-policy advice in the United Nations system

75. The Secretary-General announced the creation of a scientific advisory board on 24 September 2013, during the inaugural meeting of the High-level Political Forum on Sustainable Development. The board is made up of 26 eminent scientists, representing natural, social and human sciences and engineering. The board is mandated to provide advice on science, technology and innovation for sustainable development to the Secretary-General and to the executive heads of United Nations system organizations.

76. In response to the mandate of the United Nations Conference on Sustainable Development to contribute to strengthening the science-policy interface for sustainable development (see General Assembly resolutions 66/288, annex, para. 85 (k), and 67/290, para. 20), the 2015 edition of the *Global Sustainable Development Report* of the Department of Economic and Social Affairs of the Secretariat was released at the High-level Political Forum.[24] The report dealt specifically with strengthening the science-policy interface in the context of the post-2015 development agenda. It underscored the critical function of the science-policy interface in identifying new and emerging issues warranting policymakers' attention. The report noted that science-based policymaking is not generally well institutionalized through formal mechanisms in many countries. Therefore, the report called for adapting scientific knowledge to local needs and circumstances by strengthening national scientific institutions and by linking national institutions with global research initiatives and scientific communities and other productive sectors.

Integrating science, technology and innovation into financing for development

77. Science, technology and innovation and related capacity-building are essential to implementing the sustainable development goals and the overall post-2015 development agenda. Similarly, they are essential elements of the Addis Ababa Action Agenda of the third International Conference on Financing for Development.

78. Innovative and affordable technology solutions will have to be developed, transferred and disseminated on an unprecedented scale in order to eradicate poverty and achieve sustainable development at a global scale by 2030. In view of such a challenge, special efforts will be needed to build science, technology and innovation capacity and enabling policy environments and to facilitate technology development, transfer and dissemination for inclusive sustainable development.

79. The United Nations Conference on Sustainable Development called for identifying options for a technology facilitation mechanism (see resolution 66/288, annex). Member States continued discussions on the way forward, in particular in the form of workshops and structured dialogues convened by the President of the General Assembly in 2013 and 2014 as well as other negotiations in the lead-up to the third International Conference on Financing for Development.

80. The outcome document of the third International Conference on Financing for Development (A/CONF.227/20) includes a decision to establish a technology facilitation mechanism, comprising a multi-stakeholder forum on science, technology and innovation for the sustainable development goals; an online platform as a gateway for information on existing science, technology and innovation initiatives, mechanisms and programmes; and a United Nations inter-agency task team on science, technology and innovation for the sustainable development goals, which will promote coordination, coherence, and cooperation on science, technology and innovation within the United Nations system to enhance synergy and efficiency, particularly for capacity-building initiatives. The mechanism would be launched at the United Nations summit for the adoption of the post-2015 development agenda.

[24] For an advance, unedited version of the report, see https://sustainabledevelopment.un.org/content/documents/1758GSDR%202015%20Advance%20Unedited%20Version.pdf.

Enhancing global science, technology and innovation supporting mechanisms

81. The Programme of Action for the Least Developed Countries for the Decade 2011-2020 (the Istanbul Programme of Action) and the Istanbul Declaration, which were adopted in 2011 at the Fourth United Nations Conference on the Least Developed Countries, called for a joint gap and capacity analysis with the aim of establishing a technology bank and a science, technology and innovation supporting mechanism dedicated to the least developed countries (see A/68/217).

82. The General Assembly, in its resolution 68/224 adopted on 20 December 2013, requested the Secretary-General to constitute a high-level panel of experts to carry out a feasibility study, with support from Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States, on the proposed technology bank and science, technology and innovation supporting mechanism.

83. In November 2014, the Secretary-General appointed a high-level panel of experts to advise on the organizational and operational aspects of the proposed technology bank and science, technology and innovation supporting mechanism dedicated to the least developed countries. The panel is expected to submit its report to the Secretary-General for transmission to the General Assembly during its seventieth session.

I. Introduction

1. The year 2015 is a defining moment for the international trade and development community. The Heads of State and Government of Member States will meet from 25 to 27 September to adopt the post-2015 development agenda. Meanwhile, the third International Conference on Financing for Development, held from 13 to 16 July in Addis Ababa, has set a global action agenda for mobilizing resources to finance development in the post-2015 context. These will be followed by the twenty-first session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, to be held from 30 November to 11 December in Paris, and the Tenth Ministerial Conference of the World Trade Organization (WTO), to be held from 15 to 18 December in Nairobi. The emerging 17 goals and 169 targets under the sustainable development goals are universal, integrated and transformative in nature, and international trade is expected to act as a powerful enabler of the desired transformative shifts. Within the United Nations system, the United Nations Conference on Trade and Development (UNCTAD) serves as the focal point for the integrated treatment of trade and development, as well as interrelated issues in the areas of finance, technology, investment and sustainable development. The fourteenth quadrennial session of UNCTAD, to be held from 14 to 18 March 2016 in Lima, will provide an excellent opportunity to forge international consensus on the means for translating decisions related to trade and development into action.

II. Trends in international trade and development

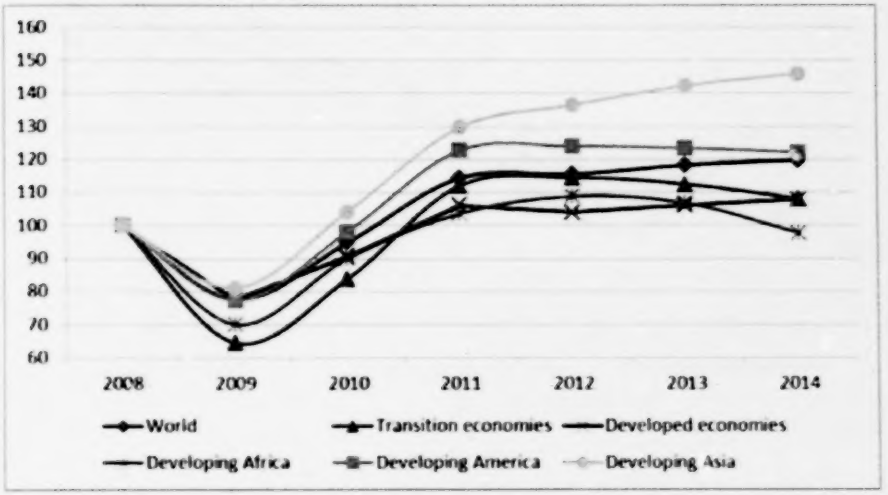
2. After a modest increase of 3.2 per cent in 2014, world trade volume is expected to expand in 2015 by 3.8 per cent.[1] The slow pace of trade expansion reflects that of the global economy. World output grew by 3.2 per cent in 2014 in constant purchasing power parity terms, and is estimated to improve slightly to 3.4 per cent in 2015. With the major economies facing the risk of "secular stagnation" and China's economic slowdown increasingly confirmed, weak global demand would continue to weigh on trade prospects. It is notable that the ratio of world trade growth to world output growth was one-to-one for 2012-2014 as compared to the two-to-one ratio observed prior to the global crisis. Since the 1990s, intensive trade in intermediate goods associated with global value chains has resulted in a faster pace of growth in trade than in output. Some 60 per cent of world trade consists of intermediate goods and services. Among the possible reasons for the decline in the responsiveness of trade to output growth is the deceleration of global value chains trade, as major exporters increasingly source inputs domestically.

3. In 2014, the nominal value of world merchandise exports reached $18.9 trillion. Most developing regions and transition economies saw their exports contract or decelerate (see figure I). Only developing countries in Asia continued to expand their exports, reaching $6.9 trillion, although their exports have recently started to show signs of deceleration. The relative dynamism of developing countries in Asia is a reflection of their strong engagement in global value chains. One manifestation of this trade associated with such chains is the intensity of intraregional trade. Intraregional trade between developing countries in Asia

[1] World Economic Situation and Prospects 2015: update as of mid-2015.

expanded rapidly and now accounts for 54 per cent of their total exports. Intra-African trade is also increasing, albeit from a lower base. After having grown rapidly, South-South trade has stagnated since 2011 at $5 trillion, while trade between developed and developing countries grew quickly and represented 40 per cent of world trade in 2013.

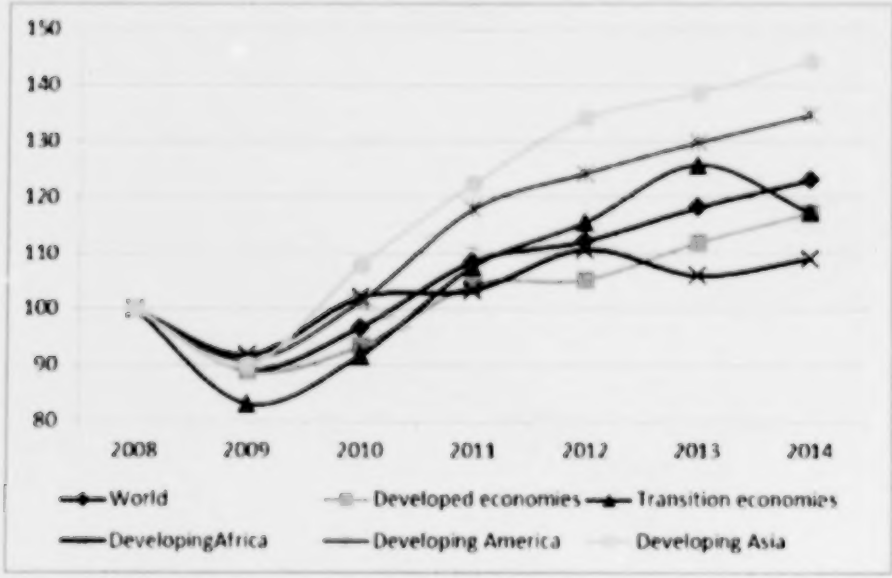
Figure I
Evolution of merchandise exports by region, 2008-2014 (index 2008=100)



Source: UNCTAD.

4. The nominal value of world commercial services exports almost doubled in value over the past 10 years, reaching $4.9 trillion for the first time ever in 2014. Most of the growth came from developing countries, in particular in Asia and Latin America and the Caribbean (see figure II). A closer look at the composition of their exports reveals that their relative dynamism was sustained by travel and "other commercial services", which includes construction, financial, telecommunications and other business services. This contrasts with exports in transport and goods-related services, which stagnated, keeping pace with merchandise exports.

Figure II
Evolution of services exports by region, 2008-2014 (index 2008=100)



Source: UNCTAD.

5. Cross-border services trade data capture only a part of services trade, as services trade increasingly occurs through foreign direct investment (FDI) and the cross-border movement of natural persons. UNCTAD estimated the value of all sales by affiliates at $36 trillion in 2014.[2] If half of this is assumed to be in services, trade through foreign affiliates could be estimated to be in the order of $18 trillion, nearly four times greater than global cross-border services exports. In 2012, services accounted for 63 per cent of global FDI stock. The cross-border movement of people supplying services is particularly important in professional and business services, as well as services related to agriculture, manufacturing and mining. This trade is on a rising trend, given the continued growth in global remittance flows (see box 1). In 2014, developing countries received $436 billion in remittances, and global remittances flows stood at $583 billion.[3]

[2] *World Investment Report 2015* (United Nations publication, Sales No. E.15.II.D.5).
[3] World Bank, Migration and Development Brief 24 (Washington, D.C., 2015).

Box 1

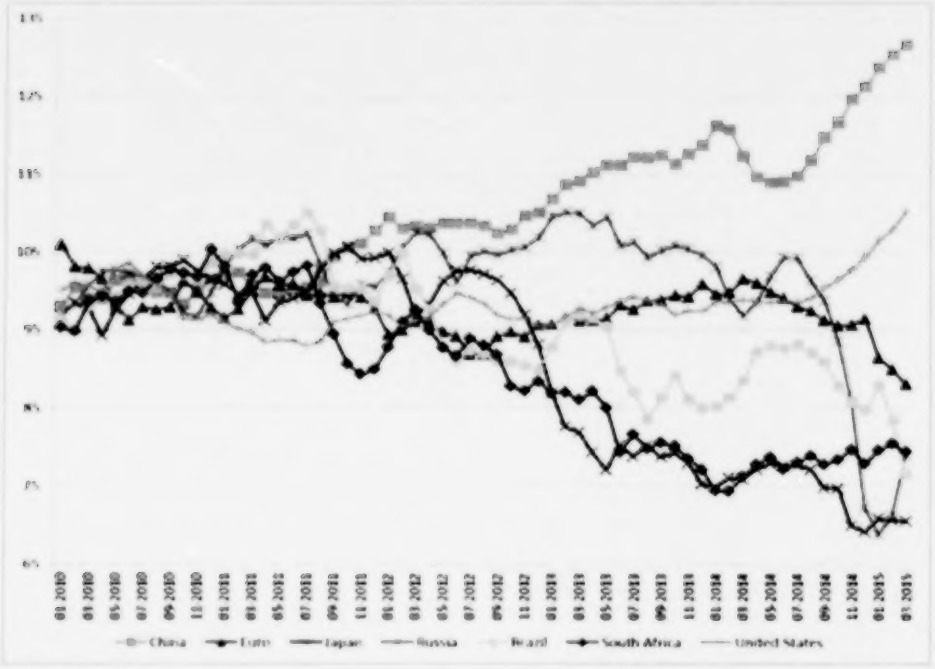
Remittances and financial inclusion

Remittances are instrumental for financing for development. Representing 26 per cent of total financial inflows, they are the second most important source of external finance after official development assistance (38 per cent) in the least developed countries, but they are private flows. A 10 per cent rise in remittances may contribute to a 3.5 per cent reduction in the share of people living in poverty. The effective use of financial services and tailor-made financial products can contribute to harnessing this potential, as the high costs of remittance transfers have often restricted flows, and the underuse of financial services have constrained their productive use. Target 10.c of the sustainable developments goals is to reduce to less than 3 per cent the transaction costs of migrants' remittances and eliminate remittance corridors with costs higher than 5 per cent by 2030. It is estimated that a 5 per cent reduction in remittances costs might yield $15 billion in savings.

Source: TD/B/C.I/EM.6/2.

6. Increased fluctuations in exchange rates have affected the relative export competitiveness of nations (see figure III). With the growing expectation of a widening divergence between the monetary policies of the United States Federal Reserve Bank and other central banks, exchange rate fluctuations have been significant in both nominal and real terms. In real effective terms, there has been a significant appreciation of the Chinese yuan renminbi and the United States dollar, which has had the effect of reducing the export competitiveness of both countries. A sharp nominal appreciation of the dollar has also strongly influenced dollar-denominated trade and commodity price statistics. Some other currencies witnessed a substantial depreciation, as in the case of the Japanese yen and the euro, as the economies with which they are associated continued their expansionary monetary policy, and the Brazilian real and the Russian rouble, as energy prices plummeted.

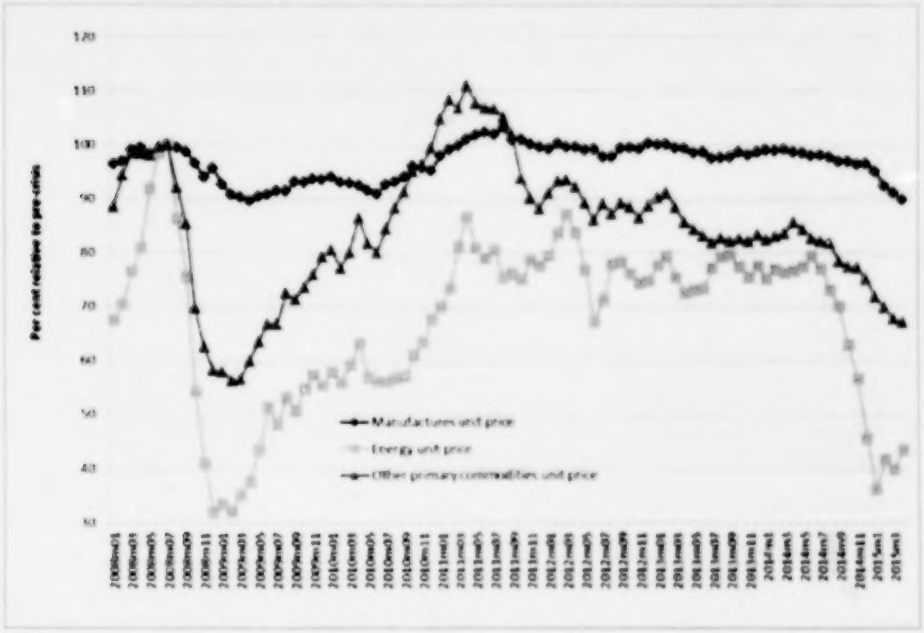
Figure III
Real effective exchange rate of selected economies (index 2010=100)



Source: UNCTAD.

7. Regarding commodity prices, energy prices dropped sharply in 2014 (see figure IV). The Brent Crude oil price dropped by over 50 per cent from June 2014 to January 2015, reaching a five-year low of $45 per barrel. This is because supplies have been rising, in particular in North America, and energy demand remains weak in some large developing economies. The oil price is projected to average $55 per barrel in 2015 and $70 per barrel in 2016.[1] The combined effect of the changes in exchange rates and commodity prices was such that the increase in world trade volume was more than offset by the decline in world trade unit value since April 2011. In 2015, the terms of trade will worsen substantially in commodity-exporting regions, adversely affecting their export earnings and external balance.

Figure IV
Evolution of trade unit prices of manufactures, energy and other commodities



Source: UNCTAD Country Profiles Database, April 2015.

8. As the world economy has yet to recover from the doldrums, job creation remains sluggish globally. Currently, approximately 200 million people are unemployed, the vast majority of whom are in developing and transitional economies. The global unemployment rate stood at 5.9 per cent in 2014, affecting women (6.3 per cent) and the youth (13 per cent) more severely. On average, developed countries tend to exhibit higher unemployment rates than developing countries. However, the actual magnitude of unemployment in developing countries may be underestimated, given the large informal economy that exists in such countries. According to the International Labour Organization (ILO), employment creation is still not sufficient to close the jobs gap, as there are 61 million fewer jobs in 2014 than there would have been without the 2008 crisis.[4]

III. Trade and the sustainable development goals

9. There is no doubt that trade helps to create the conditions necessary for growth and development. Trade provides the means to overcome constraints posed by small domestic markets and gives countries access to larger external markets, as well as skills, technology and capital, which in turn enable a better use of productive resources to catalyse structural transformation. It has the potential to support a broad range of development goals, including poverty eradication, gender equality and environmental sustainability, by promoting economic growth, creating jobs,

[4] ILO, *World Employment and Social Outlook — Trends 2015* (Geneva, 2015).

enabling an efficient use of resources and raising standards of living. The sustainable development goals implicitly recognize the contribution of trade in many regards, and goal 17 on the means of implementation makes this recognition explicit (see table below). The achievement of many goals and targets implicitly and explicitly relies on universal access to basic services and infrastructure. Priority attention must be given to strengthening the services sector (see TD/B/C.I/MEM.4/8).

Table
Sustainable development goals: select trade-related goals and targets

Goal 1. End poverty in all its forms everywhere
1.1 By 2030, eradicate extreme poverty for all people everywhere
Goal 2. End hunger, achieve food security
2.b Correct and prevent trade restrictions and distortions in world agricultural markets, including through the parallel elimination of all forms of agricultural export subsidies and all export measures with equivalent effect
Goal 3. Ensure healthy lives
3.b Provide access to affordable essential medicines and vaccines, in accordance with the Doha Declaration on the TRIPS Agreement and Public Health
Goal 7. Ensure access to affordable reliable, sustainable and modern energy for all
7.1 By 2030, ensure universal access to affordable, reliable and modern energy services
Goal 8. Promote sustained, inclusive and sustainable economic growth
8.2 Achieve higher levels of economic productivity through diversification, technological upgrading and innovation
8.a Increase Aid for Trade support for developing countries ... including through the Enhanced Integrated Framework for Trade-Related Technical Assistance to Least Developed Countries
Goal 9. Build resilient infrastructure
9.1 Develop quality, reliable, sustainable and resilient infrastructure, including regional and transborder infrastructure
9.3 Increase the access of small-scale industrial and other enterprises to financial services
Goal 10. Reduce inequality within and among countries
10.a Implement the principle special and differential treatment for developing countries

10.c By 2030, reduce to less than 3 per cent the transaction costs of migrant remittances

Goal 14. Conserve and sustainably use the oceans

14.6 By 2020, prohibit certain forms of fisheries subsidies

Goal 17. Strengthen the means of implementation and revitalize the global partnership for sustainable development

17.10 Promote a universal, rules-based, open, non-discriminatory and equitable multilateral trading system under the World Trade Organization, including through the conclusion of negotiations under its Doha Development Agenda

17.11 Significantly increase the exports of developing countries, in particular with a view to doubling the least developed countries' share of global exports by 2020

17.12 Realize timely implementation of duty-free and quota-free market access on a lasting basis for all least developed countries, consistent with World Trade Organization decisions, including by ensuring that preferential rules of origin applicable to imports from least developed countries are transparent and simple, and contribute to facilitating market access

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10. Robust growth in international trade was at the source of the income growth in many developing countries in recent decades. The volume of world trade in goods and services increased fivefold from 1990 to 2013. Since 2002, trade grew faster than gross domestic product (GDP) annually for most years, and the share of exports in GDP in developing countries rose from 25 per cent in 1990 to 41 per cent by 2008 before retreating to 35 per cent in 2013. Developing countries have substantially increased their share in world trade, in particular in merchandise exports, which increased from 32 per cent in 2000 to 45 per cent in 2014, and in services exports, which increased from 24 per cent in 2005 to 29 per cent in 2014. Least developed countries' share in merchandise exports has surpassed the symbolic level of 1 per cent since 2008 and reached 1.12 per cent in 2014, almost doubling its share since 2000, when it stood at 0.56 per cent). In 2013, the export earnings of least developed countries amounted to $213 billion, more than twice their combined receipts of official development assistance, foreign direct investment and remittances. This coincided with rising incomes, economic growth and poverty reduction. The pace of per capita income growth accelerated in the period from 2000 to 2010 for most developing regions.

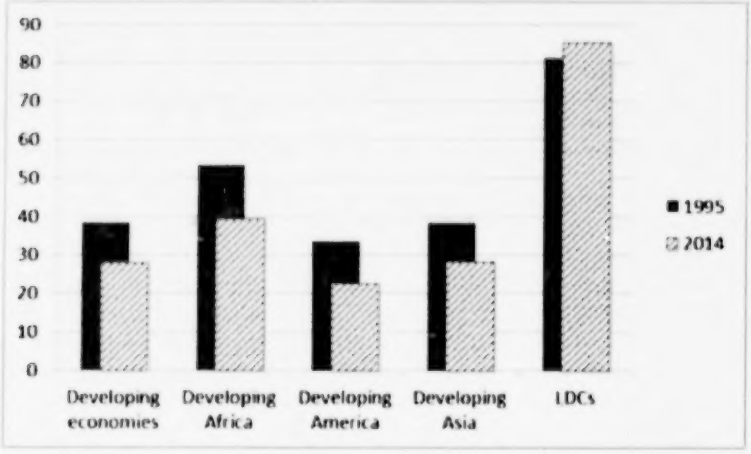
11. However, this positive overall picture masks important variations between countries. Between 2005 and 2013, 63 developing economies experienced an average annual export growth rate of over 10 per cent, but 4 countries witnessed export contraction, and 68 had a persistent trade deficit. Variations between countries are also revealed in the levels of participation in global trade. The 20 largest exporters, which are mainly developed and Asian economies, represented 70 per cent of world exports in 2013. Commodity-dependent economies continue to be vulnerable to sudden shifts in terms of trade. Such uneven trade performance serves as a reminder that inequality between countries, as well as inequality within countries, remain a persistent development challenges that require policy attention.

12. Even when trade derived from global value chains allowed countries to specialize in specific production segments rather than entire industries and opened opportunities for "fast-track industrialization", this was not free from risks. In some cases, it has led to "thin industrialization", in which a country specializes in low-skill, low-productivity activities that are less conducive to long-term development. That is because trade may create short-term incentives to specialize in activities that reflect economies' existing factor endowments. For instance, labour-intensive, resource-intensive and low-skill technology-intensive exports represented more than 80 per cent of total manufactures exports from least developed countries in 2013, and this share has increased since 1995 (see figure V).

Figure V

Share of labour-intensive, resource-intensive and low-skill technology-intensive manufactures exports in total manufactures exports by region, 1995 and 2014

(Percentage)

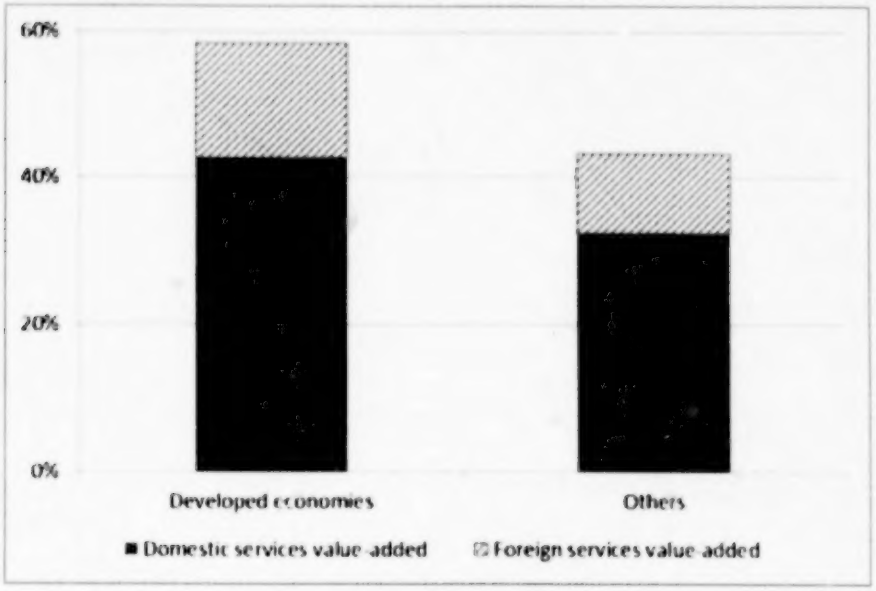


Source: UNCTAD.

13. The rapid growth in trade associated with global value chains has been enabled by the "servicification" of national economies and the increased tradability of services. The international fragmentation of production requires efficient professional, business and infrastructure services (namely energy, transportation, telecommunications, information and communications technology and financial services), and some valueadded services (including research and development, product design and marketing) actually capture a substantial proportion of value added. The proportion of the services value-added to the gross value of exports represented almost 60 per cent in developed countries and over 40 per cent for developing countries in 2011 (see figure VI). It is notable that imported foreign valueadded services accounted for a sizable 15 per cent in developed countries, and this share had increased significantly since 1995. This has made services a major option for export diversification, but services sector development and trade have yet to be fully explored in many developing countries (see TD/B/C.I/MEM.5/5).[5]

[5] Mashayekhi, Mina et al., *Services, Trade and Development* (UNCTAD, 2011).

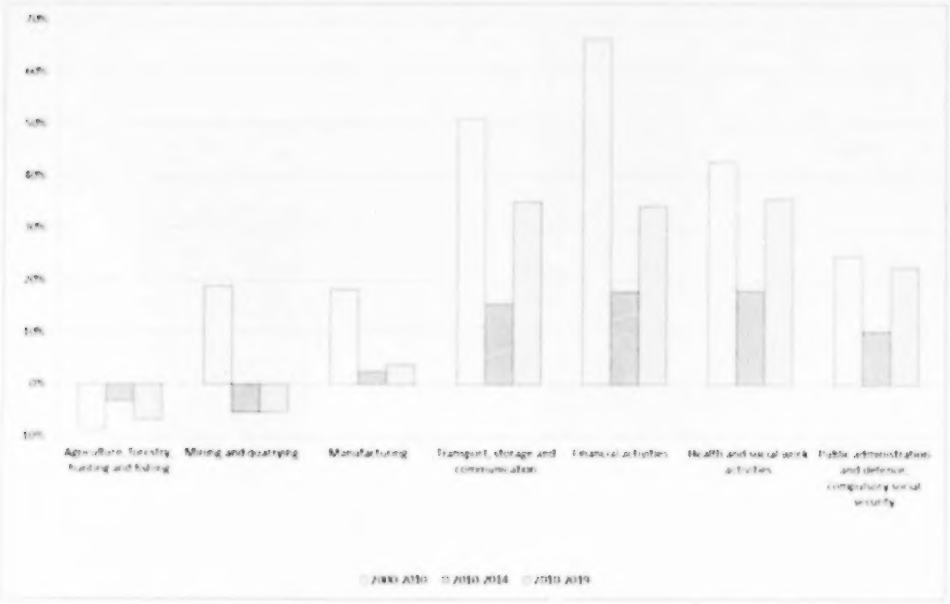
Figure VI
Domestic and foreign services value added share of gross exports, 2011



Source: UNCTAD.

14. Furthermore, while promoting productive employment remains a key concern under sustainable development goal 8, it is mainly in the services sector that new jobs have been created in developing countries since 2000, in particular transport, storage and communications and financial activities (see figure VII). In these economies, the traditional agriculture and mining sectors have seen negative employment growth, while the manufacturing sector saw a weak employment creation since 2010. Since the 1990s, emerging developing countries have experienced a reallocation of the labour forces away from industry and towards services. However, the weak dynamic in employment generation in the manufacturing sector remains a matter of concern, as industrial employment plays a critical role in structural transformation.

Figure VII
Sectoral employment growth for selected sectors in developing and transition countries



Source: UNCTAD calculation based on ILO, Trends Econometrics Models.

15. Some illustrations of the complex trade-development nexus highlighted above indicate that translating static efficiency gains from trade into inclusive and sustainable development is not an automatic process but requires deliberate policy actions. It requires coherent and integrated policy intervention that is supportive of structural transformation in order to build broad-based productive capacities that would be conducive to diversification, technological upgrading and job creation. Industrial development and technology policies are important in exploring the dynamic comparative advantages that can be used to achieve the desired structural transformation. A sound regulatory and institutional framework is central to supporting all sectors of the economy, in particularly the fast-growing services economy and trade. Flanking policies are needed to enhance overall competitiveness, facilitate adjustments and support greater inclusiveness. UNCTAD assists countries in achieving such coherence through its work on trade policy frameworks (see box 2).

Box 2
Lessons from UNCTAD services policy reviews

UNCTAD services policy reviews help countries to conduct a thorough assessment of their services economy with overall and sector-specific policy recommendations and action plans. The lessons learned from these exercises commonly point to the importance of policy coherence and coordination aimed at building complementarity between services and other sectors and prioritizing services relevant to value chains; a multi-stakeholder approach to services policymaking that involves the private sector, public-private partnerships and coalitions of service industries; data availability for evidence-based policymaking; effective regulations, institutions and governance to enhance services' competitiveness, access, quality and affordability; productive technology and a business environment that are enabling, including for small and medium enterprises, and aimed at formalizing the informal economy; labour skill development; and a capitalization on regional and international integration, productive and infrastructure capacity-building and regulatory cooperation.

Source: TD/B/C.I/MEM.4/5.

16. Positive international support, including through the aid for trade initiative, remains vital to developing countries in building productive and trade capacities and reaping effective development benefits from trade. According to the Organization for Economic Cooperation and Development (OECD), since 2006, a total of $246.5 billion has been disbursed for financing aid for trade programmes for 146 developing countries,[6] mainly in Asia and Africa, which received 38 and 35 per cent of that amount, respectively. Over three quarters of total aid for trade has been directed at four sectors: transport and storage, which accounted for 29 per cent of the total; energy generation and supply, which accounted for 21 per cent; agriculture, which accounted for 18 per cent; and banking and financial services, which accounted for 10 per cent. It is critical that sufficient resources be mobilized and impacts maximized to support a beneficial trade integration of developing countries. The United Nations system, including through UNCTAD, is contributing to these collaborative efforts.

IV. Developments in the multilateral trading system

17. A universal, rules-based, open, non-discriminatory and equitable multilateral trading system remains a central component of a global partnership for sustainable development under sustainable development goal 17.10. The Doha Round provided a unique opportunity to enhance the system's openness and equity while rebalancing its rules and norms in favour of development. However, progress in its development dimension remains limited. The centrality of multilateralism is also affected by parallel plurilateral and regional processes.

[6] WTO, Aid for Trade at a Glance 2015: Reducing Trade Costs for Inclusive, Sustainable Growth.

A. Overview

18. The Doha Round was launched in 2001 and sought to address a broad range of issues related to market access and rules in addition to the two built-in agenda items on agriculture and services. The negotiations were to give priority attention to developing countries' implementation difficulties and special and differential treatment with a view to redressing the existing imbalances. The original goal was to conclude the Round by 2004. Recurrent setbacks were increasingly perceived as affecting the credibility of the multilateral trading system. The outcomes of the Ninth Ministerial Conference of the World Trade Organization, held in Bali, Indonesia, from 3 to 6 December 2013, regenerated confidence and paved the way for negotiations on the rest of the Round. Outcomes included the Agreement on Trade Facilitation, which was the first binding multilateral agreement since the Uruguay Round, and the decision on public stockholding for food security purposes, which addressed, on an interim basis, the concerns of some food-insecure developing countries by instituting the "peace clause"[7] and laying out a road map towards achieving a more permanent solution.

19. Following the Ninth Ministerial Conference, WTO members had until 31 July 2014 to adopt a legal protocol to amend the WTO Agreement to incorporate the Agreement on Trade Facilitation, and the latter would then be open for acceptance until 31 July 2015. This timeline was not met, due to the concern of some developing countries regarding the implications of the early harvest for the Agreement on Trade Facilitation in terms of food security issues. This stalemate was unblocked by the General Council's decisions of 27 November 2014, which cleared the path towards launching a process aimed at developing a clearly defined work programme by July 2015 to conclude the Round. Ongoing discussions have underlined key principles: (a) the need for a balanced approach to agriculture, non-agricultural market access and services; (b) the centrality of the development dimension, in particular least developed country issues; and (c) the need to focus on "doables". This work is expected to intensify in view of the July deadline and as the date of the tenth Ministerial Conference approaches.

20. A major stumbling block in the negotiations has been the question of how to adapt, or recalibrate, negotiating approaches to evolving economic and policy realities and, more specifically, whether or not to use the 2008 draft modality texts on agriculture and non-agricultural market access as a basis. For instance, an argument has been put forward, mainly by the developed countries, that greater contributions by developing countries are warranted because their economic weight has increased significantly over the years and higher commodity prices and policy reforms have led to a substantial reduction in the developed countries' use of trade-distorting agricultural support and an increased use of the developing countries' use of such measures, including for food security purposes. Many developing countries have underlined the continued relevance of the persistent development challenges they face, such as pervasive in-country poverty, food insecurity and nascent industrial bases, which entails a need to adequately prioritize development flexibilities and special and differential treatment.

[7] This was an effort to refrain from levelling legal challenges against countries that breach their domestic support commitments related to public stockholding programmes.

21. Existing WTO norms and disciplines constitute the cornerstone of a rules-based multilateral trading system, as provided for under sustainable development goal 17.10, and serve as a guarantee against protectionism and discrimination. During the global crisis, protectionist measures were relatively well-contained, essentially thanks to countries' adherence to WTO norms and self-restraint. A recent WTO report for the period from October 2014 to May 2015 shows a slight deceleration in the application of new trade-restrictive measures by the Group of 20 (G-20) economies.[8] During that period, G-20 economies applied 119 new trade-restrictive measures, which represented a decrease from previous years. However, the stock of restrictive measures continues to increase owing to the slow pace in previous restrictions being removed. Of the 1,360 restrictions recorded since October 2008, 1,031 measures are still in place and affect an estimated import value of $191.8 billion, or 4.6 per cent of global imports.

22. The effectiveness of the rules-based multilateral trading system hinges upon the effective enforcement of its rules. The WTO dispute settlement mechanism is widely regarded as a success. As at June 2015, the dispute settlement mechanism had received 495 requests for consultations over the 20 years of its existence, more than the 300 disputes the General Agreement on Tariffs and Trade dealt with in 47 years, and handled disputes covering over $1 trillion of trade flows. Some parties to a given regional trade agreement even used the mechanism rather than those provided by the trade agreement, suggesting the legitimacy enjoyed by the mechanism. However, there is a current trend towards rising tensions in trade relations. Recent disputes have involved systemically complex issues of compliance with past rulings issues related to the negotiating agenda, namely the issue of agricultural subsidies, as well as emerging issues that have a bearing on other public policies such as public health, industrial policy, renewable energy and natural resources. This lends support to the long-standing case for updating WTO rules and disciplines through negotiations to better reflect twenty-first century trade realities.

23. Universality is an important element of the global partnership, as required under sustainable development goal 17.10. This has been pursued through accession processes. Thirty-four countries have signed WTO protocols of accession since 1995, bringing the number of members to 161, with Seychelles being the most recent country to become a member. Recently, the accession package for Kazakhstan was adopted in the working party, and the accession of Afghanistan and Liberia is in sight and could possibly occur before the tenth Ministerial Conference. Those countries have undertaken important policy reforms to make their trade regime WTO-compatible. A major challenge has been negotiating balanced terms of accession consistent with their development. Since the creation of the WTO, UNCTAD has provided support to acceding countries in meeting such challenges.

B. Agriculture

24. Agricultural negotiations contribute to increasing trade opportunities for developing countries, in line with sustainable development goal 17.11. With respect to the market access pillar, the 2008 draft modalities text has foreseen tariff cutting on the basis of a tiered formula whereby various linear cuts are applied to three different tariff bands and higher tariff bands are subject to deeper cuts. The recalibration exercise has centred around the question of whether this approach should be adapted or changed and how to do so. Some ideas floated thus far have

[8] WTO, Report on G-20 Trade measures (mid-October 2014 to mid-May 2015).

highlighted the use of some form of an overall average reduction approach. For instance, Paraguay has called for the use of an across-the-board average tariff reduction, to be complemented with a request-offer approach, which is based on the exchange of requests for other countries' market opening and offers to open their own markets.Another idea was to adopt a request-offer approach for all of agriculture, non-agricultural market access and services. A group of developing countries concerned about food security issues called the Group of 33 has stressed the continued validity of special products and special safeguard mechanisms, given the fact that recent market changes, namely higher and more volatile food prices, continue to adversely affect food supply and the livelihood of subsistence and small-scale farmers. The recent discussion has sought to explore the option of modifying the draft 2008 text to include different tariff-cutting parameters or complementing the tiered formula with some form of average cuts (see box 3).

Box 3

Simulating the impact of agriculture negotiations on African, Caribbean and Pacific countries

An analysis by the UNCTAD Computable General Equilibrium compared the effects on African, Caribbean and Pacific countries of the tiered formula foreseen in the 2008 modalities and the Paraguayan formula of across-the-board average cuts and found that the trade impacts for those countries would be modest, entailing less than a 1 per cent change in the imports and exports of those countries. This is mainly due to the fact that the extent of cuts in applied tariffs would be limited under both approaches.

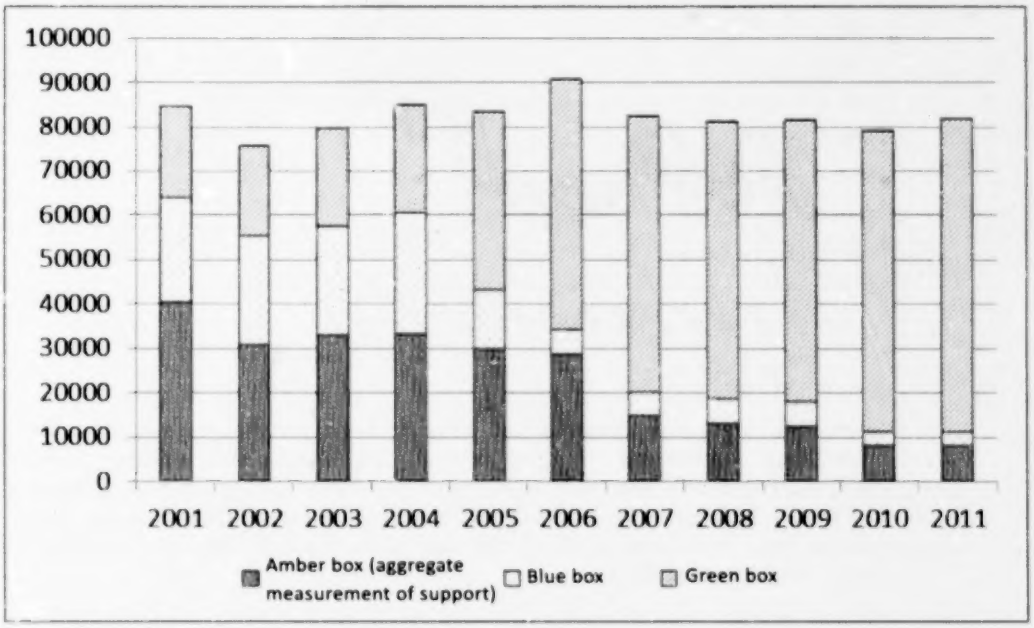
	Average agriculture applied tariffs			*Average tariffs facing agricultural exporters*		
Region	*Base (percentage)*	*2008 modalities (percentage)*	*Paraguay (percentage)*	*Base (percentage)*	*2008 modalities (percentage)*	*Paraguay (percentage)*
West Africa	11.7	11.6	11.6	2.4	2.4	2.4
Central Africa	13.5	13.2	13.3	5.6	5.5	5.5
East Africa	14.5	14.4	14.4	4.3	4.0	3.9
Southern Africa	4.1	4.0	4.1	16.9	10.8	9.6
Caribbean	11.0	10.9	9.8	14.3	13.4	12.8
Pacific	11.9	11.8	11.1	1.7	1.6	1.6

With respect to tariffs on such countries' agricultural exports, the limited reduction in trade-weighted average tariffs could be explained by the increase in trade with other developing countries, as many of them would not be making substantial tariff cuts. Another reason is that, as almost one third of exports from African, Caribbean and Pacific countries go to the European Union under preferential conditions, such countries would see little improvement in their market access conditions but be affected by preference erosion. Both scenarios improve the prospects of Southern Africa and the Caribbean in particular. On the import side, both scenarios have little impact on the countries' tariffs, given the gap between bound and applied rates. Global welfare gains are $45 billion under the 2008 modalities scenario and $47 billion under the Paraguayan formula.

Source: UNCTAD.

25. Substantial reductions in trade-distorting agricultural subsidies help to correct distortions in agricultural markets, in line with sustainable development goal 2.b, on ending hunger and achieving food security. In the area of domestic support, the 2008 modalities foresaw disciplining a new category of support, namely overall trade distorting support, which includes all sub-categories of trade-distorting support, and applying product-specific caps. The idea was to limit the opportunities for escaping from the reduction commitment by changing the nature of support measures or targeted products, which has been called "box shifting" and "product shifting". Recent discussion has addressed the question of whether numerical limits on the overall trade-distorting domestic support should apply to all countries and whether *de minimis* support, which is defined as 5 per cent of domestic production for developed and 10 per cent for developing) countries, should be increased, reduced or granted with any special and differential treatment for developing countries. This reflects the fact that there has been a substantial reduction in trade-distorting support in traditional users and a faster increase in the use of non-trade distorting green-box support (see figure VIII). Those countries would largely be able to meet the reduction commitments in allowance levels without reducing actual spending levels.

Figure VIII
Composition of domestic support in the European Union (in millions of euros)



Source: International Centre for Trade and Sustainable Development.

26. In accordance with the November 2014 General Council decision, the search for a permanent solution to the issue of public stockholding for food security continues. Possible options considered include allowing larger aggregate measurement of support entitlement for developing countries by raising the *de minimis* threshold from 10 to 15 per cent, which would qualify as "green-box" price

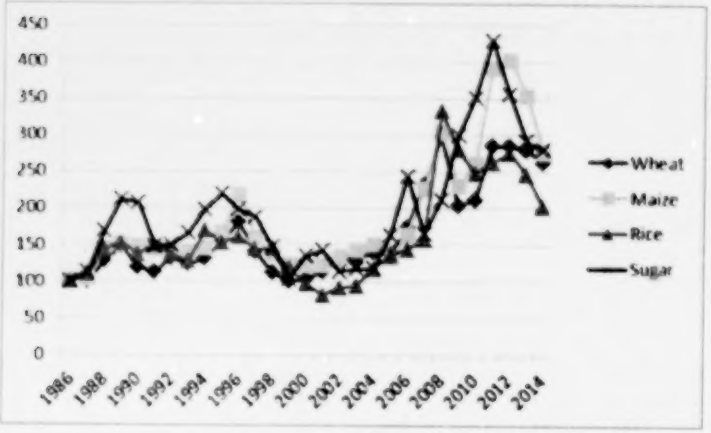
support under the food stockholding programme, or redefining the subsidy calculation method by using a three-year rolling average instead of a fixed reference price. Any permanent solution should contribute to the achievement of sustainable development goal 2.b on food security (see box 4).

Box 4

Food security under the World Trade Organization Agreement on Agriculture

Public stockholding for food security purposes in developing countries is permitted under the WTO Agreement on Agriculture subject to the condition that the difference between the acquisition price and the external reference price is accounted for in the aggregate measurement of support. Since the external reference price was fixed as the average price for a product for the period 1986-1988, when the commodities price level was low (see figure below), the Group of 33 has found this calculation method inadequate, as it could inflate the amount of implied subsidies, particularly given recent high food prices and subsequent high administered prices.

Yearly food commodity indices 1986-2014 (index 1986=100)



Source: UNCTAD.

Since most developing countries had made no aggregate measurement of support commitment during the Uruguay Round, the only trade-distorting subsidy entitlement available for them is *de minimis* support. Therefore, the difference between the acquisition price and the external reference price should be within a *de minimis* limit. The Group of 33 saw the risk of the implied subsidies, as calculated above, breaching that limit.

C. Non-agricultural market access

27. Improved industrial market access conditions increase trade opportunities for developing countries, in line with sustainable development goal 17.11, and enhance diversification, technological upgrading and innovation, in line with sustainable development goal 8.2. According to the 2008 draft modalities, tariff reductions in

non-agricultural market access were to be based on the Swiss formula, which would reduce higher tariffs more than proportionately. The key issue in the negotiations has been how to ensure real market access while also fulfilling the "less than full reciprocity" principle for developing countries. Discussions on recalibrating this approach, as in the area of agriculture, have been limited to the suggestion that the request-offer and/or average cuts approaches be used. The issue of non-tariff barriers is not yet addressed under the post-Bali discussion, but their use is on the rise.

28. Possible outcomes may be influenced by the ongoing plurilateral negotiations outside the Doha Round. Of the 52 parties to the WTO Information Technology Agreement, 25, which represent over 90 per cent of the world trade in information technology products, are engaged in plurilateral negotiations on expanding the product coverage of the Agreement. It is expected that an agreement could be reached by the date of the tenth Ministerial Conference and help to increase access to information and communications technology in line with sustainable development goal 9.c. In 2014, 14 countries, representing 86 per cent of the global environmental goods trade, launched plurilateral negotiations on the Environmental Goods Agreement, and 17 countries are currently involved in those negotiations. The negotiations would build on a list of 54 environmental goods identified by the countries of the Asia-Pacific Economic Cooperation and define a list of environmental products guided by the end use of the products, such as waste management or renewable energy generation, to reduce import tariffs to below 5 per cent by the date of the tenth Ministerial Conference. This is relevant to sustainable development goal 13 on combating climate change and other environment-related goals, including goals 14 and 15.

D. Services

29. The contribution of services to the achievement of the sustainable development goals is crucial. The achievement of many goals and targets implicitly and explicitly relies on universal access to basic services and infrastructure. These include health (goal 3), education (goal 4), water and sanitation (goal 6), energy and resilient infrastructure (goal 7), and innovation (goal 9), as well as telecommunications, access to financial services, sustainable tourism and transport. Several cross-cutting goals, especially goal 1, on ending poverty, goal 8, on inclusive and sustainable economic growth and employment, and goal 10, on inequality, as well as environment- and gender-related goals and targets all presume efficient, environmentally clean and equitable functioning of the services sector.

30. There has been limited engagement on services, as negotiating attention has been focused primarily to agriculture, despite the stated objective of adopting a balanced approach to various core issues. Major players are also engaged in the plurilateral negotiations for a trade in services agreement outside the Doha Round. These negotiations involve 24 WTO members, representing 70 per cent of global services trade, and are aimed at comprehensive and ambitious services liberalization with substantial sectoral coverage. It is notable that some key emerging developing countries are not part of this process. In the absence of a broad consensus, the future agreement would take the form of a preferential services agreement in line with article V of the General Agreement on Trade in Services. The negotiations are based on the General Agreement's positive list approach, and national treatment

commitments would be applied horizontally. The negotiations also address regulatory disciplines such as licensing, financial services, telecommunications, e-commerce and the movement of professionals. The existence of multiple services-related regional trade agreements among participants in the negotiations on a trade in services agreement implies that the effect of such an agreement on intra-group services trade may be limited. The participants' overall export interests may primarily lie in countries not participating in the negotiations. There is need to ensure that the agreement is compatible with the rules of the General Agreement.

31. Preferential market access on services for least developed countries is instrumental for the objective of doubling the least developed countries' share in world trade by 2020 in line with sustainable development goal 17.11. Consistent with a road map for the operationalization of a services waiver for the least developed countries, the least developed countries group submitted a collective request in July 2014, on the basis of which a high-level meeting was held in February 2015 at which countries could signal their services preferences (see box 5). The least developed countries' collective request had addressed horizontal and sectoral market access and national treatment restrictions in many sectors, including travel, tourism, banking, transport, logistics, education, information and communications technology, business process outsourcing and the creative industry. The barriers affecting mode 4 supply were given particular attention, including those relating to the recognition of educational and professional qualifications, as well as costly application fees and burdensome documentation for visas, licences and work permits.

Box 5

World Trade Organization high-level meeting on services preferences for least developed countries

At the high-level meeting, 25 countries expressed their intentions, and 18 of those announced their specific preferences. These addressed such sectors as tourism, financial, transport, logistic, construction, distribution, professional, computer-related and other business services, as well as all modes of delivery, such as the removal of some equity requirements in mode 3 and the elimination of economic needs and labour market tests in mode 4. As regards mode 4, the indicated measures included facilitating domestic regulation aspects, particularly the recognition of qualifications by professional associations. Some countries indicated extended periods of stay for business visitors, trainees and intercompany transfers, and the waiving of visa fees and quotas. Several confirmed that they provided least developed countries with the same treatment they were giving under regional trade agreements or the future trade in services agreement. To what extent these could be translated into commercially meaningful services preferences to meet the expectations of the least developed countries remains to be ascertained. The least developed countries appreciated the UNCTAD services policy reviews, which they used to develop their collective request. As at July 2015, nine countries had provided notification of their initiatives, and formal notification is expected by 31 July 2015.

E. Trade facilitation

32. Trade facilitation is expected to reduce trade costs and contributes to increasing developing countries' exports, in line with sustainable development goal 17.11, and promoting diversification, technological upgrading and innovation, in line with sustainable development goal 8.2. OECD research using the trade facilitation index finds that comprehensive implementation of all measures in the Agreement on Trade Facilitation would reduce trade costs by 11.8 per cent in developed countries and by 14.6 to 17.4 per cent in developing countries.[9] Improvements in formalities such as the streamlining of border procedures and automation of the border process are found to have the greatest impact on trade cost savings. Many of the specific trade facilitation measures are shown to have a high return on investment, as they help to reduce costs and increase revenue collection.

33. The November 2014 General Council decision had maintained the deadline of 31 July 2015 for members to provide notification of their legal acceptance of the Agreement on Trade Facilitation. The Agreement will enter into force when two thirds of members have accepted it. As at July, 8 countries have completed ratification, and some 60 countries, including 3 least developed countries, have submitted notification of their "category A" commitments, or provisions they have identified for immediate implementation. This is in line with the innovative special and differential treatment provisions that form the integral part of the Agreement, according to which the level and timing of commitments would be directly linked to the countries' implementing capacity, the provision of capacity-building support and capacity acquisition. While recognizing the case of trade facilitation, some developing countries, particularly least developed countries, were concerned that the implementation of some measures would be complex or costly. Measures often not implemented by developing countries include measures pertaining to the publication and availability of information; advance ruling; border agency cooperation; and prior publication and consultation. A Trade Facilitation Agreement Facility has been launched to help developing countries to build implementation capacity.

F. Development issues

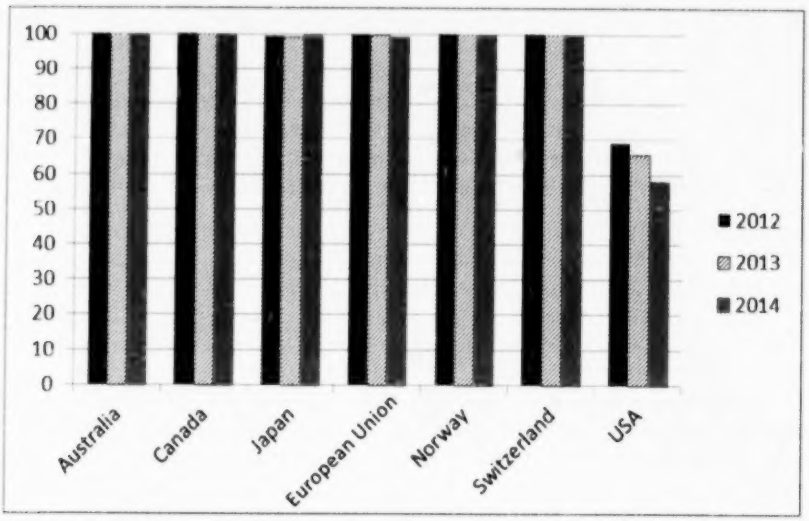
34. As regards duty-free and quota-free market access for least developed countries, an issue that is also addressed in sustainable development goal 17.12, all developed countries but one have implemented the WTO ministerial decision to grant duty-free and quota-free treatment to at least 97 per cent of tariff lines. For the United States of America, the duty-free and quota-free tariff line coverage remains 84 per cent, without taking into account the United States Act for Growth and Opportunity in Africa. Measured in import value terms, nearly 100 per cent of imports from least developed countries enter duty-free into most developed country markets (see figure IX). In the United States, preferential schemes vary according to the specific least developed countries to which they are applied, and the treatment of apparel, which represents some 90 per cent of bilateral exports for Bangladesh, Haiti and Lesotho, differ across these schemes. Several developing countries,

[9] OECD, Implementation of the WTO Trade Facilitation Agreement: The Potential Impact on Trade Costs.

including China, India, the Republic of Korea and, most recently, Chile, have also extended duty-free and quota-free market access for least developed countries.

Figure IX

Proportion of duty-free imports from least developed countries in developed countries (percentage)



Source: UNCTAD.

35. Simpler and more transparent preferential rules of origin are important to help least developed countries effectively utilize trade preferences under duty-free and quota-free initiatives. An analysis of preference utilization suggests relatively low utilization for such products as apparel, footwear, fruit, tobacco and fish. Conversely, the utilization of the preferences under the United States Act for Growth and Opportunity in Africa by a major beneficiary, Lesotho, is 100 per cent, mainly because the Act contains a special rule on apparel, called the "third country fabric" rule, that allows beneficiaries to source yarn and fabric from any country. Under the new rules of origin of the European Union Generalized System of Preferences, the introduction of a similar single transformation rule has led to increased utilization rates for certain categories of apparel. Facilitating the origin administration may also be useful. Under the new European Union Generalized System of Preferences rules, origin administration will change as from 2017 from the current third-party certification by public authorities to self-certification by registered exporters. This would require important institutional adjustment, which could usefully be supported.

36. Sustainable development goal 10.a underlines the importance of implementing the principle of special and differential treatment for developing countries. Least developed countries continue to make provisions related to special and differential treatment precise, effective and operational, and are working on a list of 25 Agreement-specific proposals regarding such treatment. The issue of cotton remains to be addressed. The recent United States farm bill provides substantially less support to cotton, and domestic cotton production in the United States is likely to trend downward, reducing its cotton supply and exports.

V. Developments in regional trade agreements

37. The increased prevalence of regional trade agreements represents a major transformative shift in the recent evolution of the international trading system and thus has an important bearing on the achievement of sustainable development goal 17.10. As at April 2015, WTO had been notified of some 612 such agreements, 406 which of were in force. In addition to full market opening, recent twenty-first century regional trade agreements encompass a range of behind-the-border measures, including services, investment, competition policy, capital movement, intellectual property rights and government procurement. The emergence of "regional trade mega-agreements" has been a game changer. The Trans-Pacific Partnership Agreement, which is being negotiated among 12 countries, would create a market covering some 800 million people with a combined GDP of $27 trillion. The Transatlantic Trade and Investment Partnership, on which negotiations were launched in June 2013 by the European Union and the United States of America, would cover half of global output and a third of global trade. The Regional Comprehensive Economic Partnership, on which negotiations were launched in 2012, would create a free trade area between the Association of Southeast Asian Nations and its six external partners, covering half of the world's population.

38. With the passage in June 2015 of the United States Trade Promotion Authority law, a real prospect emerged for the conclusion of the Trans-Pacific Partnership Agreement. The Trade Adjustment Assistance programme adopted at the same time provides retraining funding to workers whose jobs are lost because of foreign trade. Among the outstanding issues is the level of intellectual property protection for pharmaceuticals and patents. The investment chapter remains contentious, especially its provisions on an investor-State dispute settlement mechanism that would allow foreign investors to sue host-country Governments for loss of expected future profits. Market access in some sensitive sectors, including dairy, poultry and eggs in Canada, automobiles in the United States of America and rice, beef and pork in Japan, have yet to be finalized, as do product-specific rules of origin for apparel.

39. The main factor shaping twenty-first century regional trade agreements is the need to overcome regulatory divergences and non-tariff measures across markets, as they give rise to market segmentation. The multiplicity of regulatory policies results in international trade costs often being much greater than costs for domestic transactions. Such regulatory barriers are particularly relevant to trade associated with global value chains. The twenty-first century regional trade agreements have been driven by the changing structure of world trade in this century, whereby production factors, including factories, capital, technology and people, rather than final goods, move across borders. This entails a need for seamless trade across borders to reduce trade costs and address the trade/investment/services/intellectual property nexus. These regional trade agreements are therefore oriented towards a deeper and comprehensive integration aimed at creating a viable platform for regional value chains by ensuring a trading environment free of duties and non-tariff-barriers through regulatory harmonization and mutual recognition, as well as through the establishment of a mechanism to ensure regulatory coherence, such as through prior comments on regulations.

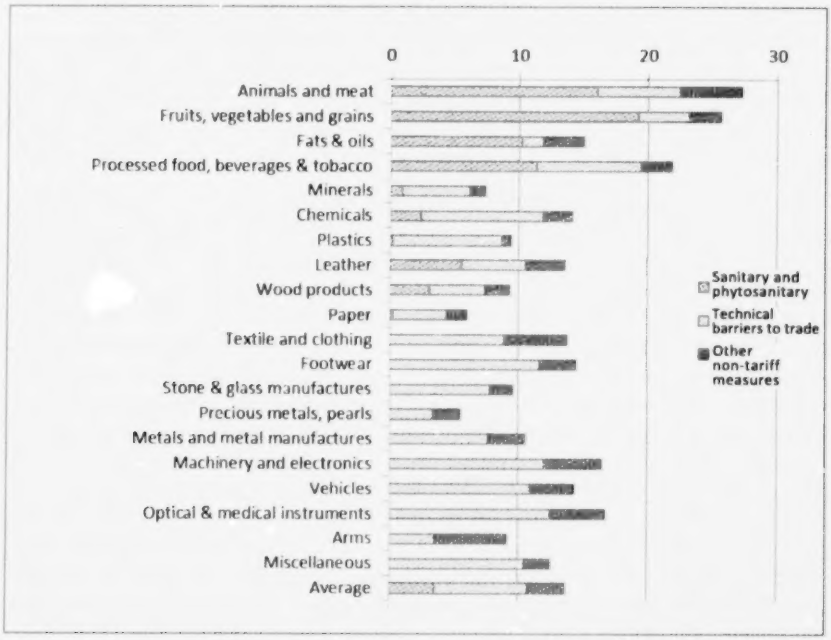
40. Substantial economic gains are commonly estimated to result from these agreements, owing in part to the substantial volume of trade covered. However, larger gains are also expected as a result of such agreements' strong regulatory focus, as

regulatory barriers can represent a much higher level of protection than that of tariffs. In the case of the Transatlantic Trade and Investment Partnership, an ambitious agreement is estimated to increase European Union GDP by 0.5 per cent and United States GDP by 0.4 per cent by 2027. It could increase world income by €238 billion, including €86 billion in third-party countries. The effects of tariff reduction are dwarfed by those of non-tariff barrier reductions through harmonization and mutual recognition measures (see box 6). The trade cost equivalents of transatlantic non-tariff barriers are generally higher than 10 per cent of import value.

Box 6
Trade effect of non-tariff measures

Non-tariff measures, including sanitary and phytosanitary and technical barriers to trade measures, affect over 50 per cent of products exported from developing countries. The incidence of non-tariff measures is on average some 13 to 14 per cent of tariff equivalents, with the highest incidence registered in agriculture, in particular the animal and vegetable sectors, where it is above 25 per cent (see figure below). The aggregate impact of sanitary and phytosanitary and technical barriers to trade measures on trade costs is high, particularly for least developed countries, in terms of both entry and transition costs. Non-tariff measures affect almost 90 per cent of trade in natural resources and 80 per cent of trade in manufacturing.

Ad valorem equivalent of sanitary and phytosanitary measures, technical barriers to trade and other non-tariff measures, by sector (percentage)



Source: O. Cadot et al., *Deep Regional Integration and Non-Tariff Measures: A Methodology for Data Analysis* (UNCTAD, 2015).

However, non-tariff measures are designed to meet certain public policy objectives and therefore cannot be entirely removed. Rather, their disproportionate trade-restrictive effect needs to be addressed. Mutual recognition and the harmonization of requirements, particularly through the application of international standards, are instrumental in reducing trade costs. A 1 per cent increase in internationally harmonized standards is estimated to increase export variety by 0.3 per cent. Conversely, bilateral and regional harmonization could have ambiguous effects, with, for instance, facilitated access to a given partner's market offset by a loss in price competitiveness in other developing markets.

41. The twenty-first century regional trade agreements have implications for developing countries. Regulatory harmonization would serve to reduce trade costs for trade among the parties to a given regional trade agreement, but could raise such costs for developing members if it were to lead to upward harmonization. Larger and smaller developing countries tend not to participate in regional trade mega-agreements. It would therefore be important to minimize the costs of regulatory harmonization for developing countries, including through the use of less stringent standards, mutual recognition and international standards.

42. Stronger regional trade agreement regulatory disciplines that exceed those within WTO or are on matters not yet covered by WTO agreements may constrain developing countries' regulatory autonomy in pursuing proactive industrial and development policy objectives. For instance, the investor-State dispute settlement mechanism is seen to confer greater rights to foreign investors, as only foreign investors can have recourse to the international tribunals such as the International Centre for Settlement of Investment Disputes. There is a concern that this might lead to a regulatory freeze, as regulators at all levels might refrain from taking certain regulatory actions, such as the imposition of environmental regulations, for fear of the legal challenge and large financial compensation packages that could result from such actions, as some regional trade agreements have introduced a broad definition of "investment" and stringent disciplines.

43. Disciplines on government procurement, State-owned enterprises and export taxes could limit the ability of Governments to support domestic industries and small and medium-sized enterprises. Some regional trade mega-agreements have sought to address the potentially anti-competitive effect of the tendency of State-owned enterprises to receive preferential treatment from the Government, including preferential financing. Among the options considered are rules to establish "competitive neutrality", so that State-owned enterprises in competition with the private sector do not have a competitive advantage by virtue of government ownership. Developing countries have stressed the important role of State-owned enterprises in delivering public policy goals. State-owned enterprises are most common in the extraction and energy industries and heavy industries, some services, including telecommunications and financial services, and manufacturing sectors, including the tobacco industry. Recent North-South regional trade agreements, such as economic partnership agreements between the European Union and the African, Caribbean and Pacific countries, have often prohibited export restrictions. However, such measures were often applied to mineral and agricultural goods for development policy purposes and were aimed at, inter alia, preserving domestic supply and prices and supporting downstream processing activities.

44. South-South regional integration has intensified and deepened. Many South-South regional trade agreements have acted as platforms for the development of productive capacity, regional transport networks and infrastructure, and can contribute to the achievement of sustainable development goal 9.1 on regional and transborder infrastructure. Africa's regional integration has seen a major boost as a result of the decision to establish a continental free-trade area by 2017 and the establishment in June 2015 of a Tripartite Free Trade Area among the countries of the Common Market for Eastern and Southern Africa, East African Community and Southern African Development Community.

45. By inducing high-standard, cutting-edge regulatory harmonization covering a large share of world trade, regional trade mega-agreements could further affect incentives for multilateralism at the systemic level. The regulatory template being developed under such mega-agreements might be used as a basis for future multilateral trade negotiations. Most significantly, there is a view that the current regional trade agreement trends might give rise to a two-tiered trading system, in which old trade issues from the twentieth century are addressed in WTO and new issues from the twenty-first century are addressed by regional trade agreements. Such mega-agreements might lead to a further fragmentation of the trading system, differentiating those countries within and outside the system, and run the risk of affecting the relevance of the multilateral trading system in the long run. This highlights the importance of enhancing coherence between the multilateral trading system and regional trade agreements, to ensure an optimal relationship between the two processes so that they can, as a whole, provide an enabling environment. This also appears to point to the case for carefully examining the institutional adaptations to the multilateral trading system that may be required in the long run in order to enhance its relevance and effectiveness as it faces the reality of multiple parallel processes.

VI. Conclusion

46. Trade has a critical role to play in the world's march towards ending poverty by 2030 and bringing about transformative shifts in economies, societies, ecosystems and the environment. The gains that could be achieved by reducing trade distortions and trade costs in line with development imperatives are important. Trade can constitute a major source of development finance. Vibrant trade through global value chains and services can create an enormous opportunity for productive employment, diversification and the upgrading of technology. Services are the backbone of the economy and play a pivotal role in promoting health, education, innovation, infrastructure development and access to energy services, finance and the digital ecosystem. Agricultural trade contributes to poverty reduction and food security, as many poor populations live in rural areas.

47. Deliberate policies and efforts are indispensable for maximizing the potential contribution of trade to ending poverty and achieving gender equality and the sustainable development. Realizing trade's potential in the post-2015 context will require a better understanding of twenty-first century trade realities, which are driven by global value chains and the services economy, and of the increasing interlinkages between the sector and policy dimensions. The multifaceted contribution of trade to various sustainable development goals entails a need for policies that support a coherent interface between trade and related public policies,

including those on development, employment, health, energy, water, education, gender, transport, finance, technology, the environment and migration. Mitigating the risks to the poor through trade adjustment mechanisms is important. It is fundamental that trade policy be made coherent with such public policies and integrated into a coherent development policy framework.

48. Greater coherence in global economic policymaking is also required, and global trade governance should be consistent with the sustainable development goals. Revitalizing the multilateral trading system so that it can become a global partnership for sustainable development, with improved credibility and relevance in the light of twenty-first century development challenges, is critically important. This will require ensuring a fair, equitable and open trading environment, reinforced coherence between multilateral and regional agreements, and policy space in which countries can implement proactive economic, social and environmental policies, including through operational special and differential treatment, so that trade can contribute to broad-based development and reduce inequalities among and within economies.